

X. Somers (p) Baron Somers 1/5 J. f

Francis THE *Hargrave*
ARGUMENT
OF THE
Lord Keeper Sommers,
On His giving
JUDGMENT
IN THE
BANKERS Cafe:

Deliver'd in the Exchequer-Chamber,
June 23, 1696.

In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns
of *Edward Sayer, Esq;*) for *S. Billington*, at the
Fudge's Head, near the *Rolls-Gate* in *Chancery Lane*. 1733.

*placita parlamentaria
mptoris prerogative*



The ARGUMENT of the
Lord Keeper Sommers,

*See farther as to
this case of the Bank-
ers 11. State Trials
p. 51. to 53. 50. to 65.*

On his giving Judgment in the

BANKERS Case:

Deliver'd Tuesday June 23,
1696. in the Exchequer-Cham-
ber, the Judges being present.

*J. C. 5. Mod. 29. where
may be seen the argum.
of L. C. J. Holt & L. C. J.
Fry. J. C. also in 1.
Green. 381. Mfr. Rep.
172. 238. Feinr. 601.*

THE four following Causes depend-
ing in the Exchequer-Chamber, stood
for the Judgment of the Court.

*the State Tracts comp.
M. 3. v. 2. p. 745. Daves.
v. 3. p. 1. Case of the
Bankers by Turner
printed in 1675. page
9.*

The Attorney General
against

{ Joseph Hornby,
Robert Williamson,
Thomas Smith
and
Sir Jeremy Snow.

*What was the manner
of dealing with the bankers
in the time of Ch. 2. is
explained by Lord Clarendon
see 4. Contin. of his Hist.
v. 2. p. 596. P. 4. ed.*

LORD KEEPER. THESE CASES differ in several Particulars, but as to the Points which have been chiefly spoken to, they are the same.

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I shall therefore only put the Case, as it stands upon the Record where *Williamson* is Party; which I will do shortly, because it has been opened so often already, upon the several Arguments.

Robert Williamson comes before the Barons, and exhibits Letters Patent under the Great Seal, dated 30 April, 29 Car. 2. granting to Sir *Robert Vyner*, his Heirs and Assigns, the yearly Rent or Sum of 25,003 l. 9 s. 4 d. to be yearly paid, received and taken, of the Rents, Revenues, and Profits arising to the King, his Heirs and Successors, out of the Duty of Excise, by Virtue of the Act made 12 Car. 2. for taking away the Court of Wards and Liveries, &c. and settling a Revenue in Lien thereof, and prays that these Letters Patent may be inrolled of Record.

The Barons cause them to be read and inrolled; and the Letters Patent are set forth at large in the Record.

The Effect of them is,

The King takes Notice, that He had been constrained to postpone the Payment of Monies due to the Goldsmiths, and others, upon Tallies and Orders registred.

That He could not spare such a Sum, as would satisfy those Debts, but was willing to grant to the Persons to whom he was indebted, an annual Sum answerable to the Interest of their Debts, after the Rate of 6 l. per Cent.

To that End, He had commanded the Accounts to be stated to the first of January, 1676; whereupon, there appeared due to Sir *Robert Vyner* 416,724 l. 13 s. 11 d. In Satisfaction whereof, the King resolved to grant

grant him 25,003 *l.* 9 *s.* 4 *d.* *per Annum*, to be had and taken by him, his Heirs and Assigns, out of the Rents, Revenues and Profits, which should arise or become due or payable to the King, his Heirs and Successors, out of, for, or by Reason of the Duty of Excise, and by Virtue of the said Act, to be paid quarterly, in Trust for such of his Creditors, as within a Year after the Date of the Letters Patent, should deliver up their Securities, and accept Assignments of proportionable Parts of the said yearly Sum, in Satisfaction of their Debts respectively due, and in the mean Time should not sue Sir Robert Vyner for their Debts; the Residue thereof to the Use of Sir Robert Vyner, and his Heirs.

The King directs the High Treasurer, Chancellor, Under-Treasurer, Chamberlains and Barons of the Exchequer, which then were, and the High Treasurer, Commissioners of the Treasury, &c. which should be, and all other Officers and Ministers of the Court of Exchequer, and of the Receipt thereof, in their respective Places, upon Request, to perform all Acts necessary for the due Payment of the said Rent to the said Sir Robert Vyner, his Heirs and Assigns; and to strike Tallies of *Pro*, or Assignment, or other Tallies, as the Case shall require, or as shall be desired, on the Commissioners, Treasurers, Receivers, Collectors, or Farmers of the Duty, who are required to make due Payment accordingly; so as the said yearly Sum may be received without other Warrant: And if the Profits of the said Revenue should be paid into the Receipt before the

Levyng such Tallies, or Payment made, then he authorises and requires the High Treasurer, and Commissioners of the Treasury, Chancellor, Under-Treasurer, Chamberlains, and Barons, and other Officers and Ministers of the Exchequer, and of the Receipt thereof, to whom it appertains, to pay out of such Monies as shall be paid into the Exchequer, the said yearly Sum, without other Warrant: And the Letters Patent shall be a sufficient Warrant for the Purposes aforesaid.

That Tallies of *Pro*, or Assignment, or other Tallies struck upon the Excise, at the Desire of *Sir Robert Vyner*, his Heirs or Assigns, shall be preferable to other quarterly Payments; except such yearly Sums as are payable for the Management of the said Revenue; and except certain Sums payable to the Queen and the Duke of *York*, which are to be paid in the first Place.

Sir Robert Vyner covenants at any Time within a Year, to make Assignments of proportionable Parts of the said Rent to such of his Creditors as will take the same in Satisfaction of their Debts, and will deliver up their Securities; and that he will not, during the Year, assign any Part of the said yearly Sum, except to Creditors, or others by their Appointment; and if, within one Year and an Half, any Difference arise between Him and his Creditors, touching the Assigning any Part of the said yearly Sum, to submit the Matter to the High Treasurer, or Commissioners of the Treasury, and to perform such Orders as he or they should make.

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It is provided, that all Assignments be inrolled within thirty Days after the Execution thereof, before the Auditor of the Receipt, or Clerk of the Pells, to the End it may appear what Assignments have been granted, or otherwise to be of no Effect.

And also, that when the King, his Heirs or Successors shall, at entire Payments, have paid the Sum of 416,724 l. 13 s. 1 d. to Sir Robert Vyner, his Heirs or Assigns, in Proportion among them, after the Rate of 100 l. Principal Money, for every 6 l. per Cent. per Ann. and also the Arrears of the said yearly Sum of 25,003 l. 9 s. 4 d. then the Grant should be void.

The Letters Patent are to be favourably taken for Sir Robert Vyner, his Heirs and Assigns; and to be good *non obstante* the not reciting of that Act of Parliament, whereby the Revenue is granted, or the not mentioning any former Grants or Charges of or upon the said Revenue, or the not mentioning the certain yearly Rents or Profits of the said Revenue, or the certain Nature thereof, or how the Debts due to Sir Robert Vyner did particularly arise; and notwithstanding the Statute 1 H. 4. or 18 H. 6. or 26 H. 8. * or the Act of 12 Car. 2. whereby the Revenue was granted, or any other Defect.

The King covenants, that due Payment shall be made, and all Things done, on his Part: And that if there be any Defect in the

* The Stat. meant, seems to be 6 H. 8. cap. 15. for there is no Stat. of 26 H. 8. applicable to the Case: But the Patents have been searched, and in them it is 26 H. 8.

present Grant, He, his Heirs and Successors, upon Petition, will make a further Grant, as the Attorney General shall advise.

Then *Williamson* sets forth, That by Virtue of the Letters Patent Sir *Robert Vyner* was seized *ut de Feodo & Cure*, and was indebted unto him in 1000 *l*. And that the 9th of April, 32 Car. 2. by Deed of Assignment (which he brings into Court,) reciting that he had delivered up his Securities to Sir *Robert Vyner*, and had discharged him, the said Sir *Robert Vyner* grants and assigns to him and his Heirs 60 *l*. Part of the said yearly Sum, being his proportionable Part, in Satisfaction of the said Debt, under the Condition in the Letters Patent; and prays the Assignment may be read and inrolled; which is ordered, and the Tenor is enter'd.

Williamson further says, that he delivered up his Securities and accepted the Assignment, in Satisfaction of his Debt, according to the Intent of the Letters Patent; and that he never after sued Sir *Robert Vyner*; and that the Assignment was inrolled within thirty Days before the Auditor of the Receipt; and that the Principal Sum is not paid; and that the Arrears of the yearly Sum of 60 *l*. were paid to Lady-Day 35 Car. 2. and that from that Time 405 *l*. is due for six Years and three Quarters ending at Christmas last *. Then he prays the Letters Patent and Assignment may be allowed, and the Arrears paid, and

* i. e. For the Remainder of the Reign of King *Charles II.* and the whole Reign of King *James II.* and not quite a Year of the Reign of King *William* and Queen *Mary*.

the yearly Sum paid for the Future; and that Tallies may be struck as it becomes due; and that he may have the Benefit of the Remedies and Powers mentioned in the Letters Patent: And avers that at *Christmas* last there was sufficient to pay his Arrears, besides what was payable for Management, and to Queen *Catharine*, and the Duke of *Tork*.

To this the Attorney General demurs; and *Williamson* joins in Demurrer.

Whereupon the Barons of the Exchequer give this Judgment: That the Letters Patent to Sir *Robert Vyner*, and the Assignment to *Williamson*, *juxta tenorem & effectum earundem eidem Roberto Williamson Allocentur*. And that the Sum of 405 £ . being the Arrears to and for *Christmas* 1 *W. & M.* so as aforesaid in Arrear, be paid to him at the Receipt of the Exchequer, by the Hands of the Commissioners of the Treasury, and Chamberlains of the Receipt who now are, and by the Hands of the Commissioners of the Treasury, Treasurer and Chamberlains of the Receipt for the Time being, out of the Treasure arising from that Part of the Excise in the Letters Patent mentioned to be granted to King *Charles II.* his Heirs and Successors, and in the Hands of the Commissioners of the Treasury now being, and in the Hands of the Commissioners of the Treasury and Chamberlains for the Time being; to be paid after, and besides the necessary Sums for the Management of the said Revenue, and the annual Sums payable to the Queen Dowager and the Duke of *Tork*. And that the said yearly Sum of 60 £ . from *Christmas*

Christmas i *W. & M.* be paid to *Williamson* and his Heirs, at the Receipt of the Exchequer, by the Hands of the Commissioners of the Treasury, Treasurer and Chamberlains of the said Receipt for the Time being, out of the said Treasure arising from the said Hereditary Revenue of Excise in their Hands being, *ultra & post, &c.* And that Tallies *toties quoties, &c.* be struck at the said Receipt, for the said yearly Sum upon the Commissioners, Treasurers, Receivers, Collectors or Farmers of the said Hereditary Revenue of Excise, by the Officers of the Receipt of Excise to whom it belongs, upon Request, &c. according to the Letters Patent, and the Course of the Exchequer, *Salvo Jure Domini Regis, & Domine Regine nunc si, &c.*

Upon this Judgment the Writ of Error is brought.

There have been two principal Questions made in the Arguments upon these Cases.

1st. Whether the Grants, made by King *Charles II.* of the several annual Sums out of the Hereditary Excise, to the Goldsmiths, their Heirs and Assigns, be effectual in Law, and do charge this Revenue in the Time of his Successors.

2^d. Whether the Remedies, which the Parties have pursued in this Case be proper, and such as are warranted by Law, or justified by the Course of the Court of Exchequer?

I do not take Notice at Present of the Objections which have been made to the

Form of the Judgment, as it is enter'd, that being a Matter of a different Consideration; because, admitting the Law to be for the Parties who demand the Arrears and growing Payments of these Annuities in this Manner, if there be any Error in the Entering of the Judgment, that is to be reformed in this Court, and We are to make it such as it ought to have been in the Court of Exchequer.

The first General Question has been divided, as well by the Council at the Bar, as by my Lords the Judges, who argued this Case, into two Points.

1st, If this Revenue of Excise be such an Inheritance, that the King could alien the Whole, or any Part of it, in Perpetuity from the Crown?

2^{dly}, Admitting that he might, Whether it be effectually done by the Grants to the Goldsmiths?

My Lords the Judges, who have argued these Cases upon the Writs of Error, have all agreed in Opinion, that the Letters Patent are good in Law to pass an Interest to the Patentees and their Heirs, and to bind King *Charles II.* and his Successors.

Mr. Baron *Lechmere* was of another Opinion in the Court of Exchequer.

The first of these Points is a Subject of the highest Importance, at least as to the Consequences of its Determination either Way; and perhaps, is not to be discoursed of adequately to the Extent of it in an ordinary Court of Law.

As to my own Part, being extremely desirous, as far as is possible, to avoid the Repetition

tion of what has been already said very often; and having formed the Opinion which I shall deliver in these Cases, upon the second General Question; I shall not speak at all at this Time to either Part of the first Question.

As to the second General Question, Whether this Manner of Suit, and the Proceedings in it, be warranted by the Course of the Exchequer; so that the Parties here can come immediately to the Barons, and demand their Annuities, and thereupon the Barons by their Judgment, can in a regular Course prescribe to the Treasurer and Chamberlains to issue Money out of the Receipt? — This is what I cannot hitherto be convinced of, either by what I have heard in the Debate of this Matter, or by what I have been able to observe upon the best Endeavours I could use to inform my self, in which I have spared no Pains.

I take this to be a Point of as great Moment as ever came to be discussed in *Westminster-Hall*: Not so much in respect of the Value of what is in Demand, and of what does depend upon the same Question, (tho' that amounts to about 42,385 *l.* 17 *s.* 6 *d.* *per Annum* besides the Arrears;) as because it does in so high a Degree concern the Government, and Disposal of the publick Revenue, and the Treasure of the Crown; whereof the Law has always had a superlative Care, as that upon which the Safety of the King and Kingdom must, in all Ages, depend.

I esteem it a great Unhappiness, that I cannot be so far convinced in my Thoughts upon

upon this Point, as to concur with the greater Number of the Judges who have assisted in this Court: For tho' my own Understanding must be my Guide, which I am bound to follow in delivering my Judgment; yet I am so sensible of my Defects as to distrust myself exceedingly, when I differ from so many learned Men, and should be extremely well satisfied, that my Opinion was not to be the Measure by which the Judgment is to be given in this Case.

And therefore, having heard that some Judges have made a Doubt of this Matter, I have already proposed it as a Point for the Consideration of all of them; Whether in this Court the Judgments ought to be affirmed or reversed according to the Opinions of the Chancellor, or of the Chancellor and Treasurer, when there is one; Or according to the Opinions of the Majority of the Judges, who are called to assist?

Before I proceed to deliver the Reasons, upon which I think my self obliged to conclude the same Way with my Lord Chief Justice of the Common Pleas as to this second Question, I will take Notice of two Things.

1st, That the Nature of the Debate as to this Question seemed to me to be very much changed upon his Argument.

All the Judges who spoke before him, did, as to this Point, in a Manner rely upon the two Cases of *Neville* and *Wroth* to warrant their Opinions: These Cases, which are reported in *Plowden's Commentaries*, I shall be oblig'd to put at large hereafter, and do therefore only name them at Present.

My Lord Chief Justice *Treby* particularly applied himself to shew, that the Proceedings in those Cases were adjudged upon particular Reasons, and not at all upon the Course of the Exchequer, or any Power lodged originally in the Barons by the Common Law; and were therefore not applicable to the Cases before the Court: And therefore, as he express'd himself, *proceeding upon new Topicks, he differed from them in the Conclusion.*

My Lord Chief Justice of the King's Bench only has had the Opportunity of saying any thing in Answer to his Arguments. What Weight they have had with any of the other Judges, I do not know.

2dly, The second Thing I will take Notice of is, that in several of the Arguments much was said of the Subjects Property; how it was concerned in the Event of these Cases, and what Regard there ought to be had of it.

With this I do readily agree. No Man can be more tender of Property, and careful to preserve it than I have been always, and always shall be: But I freely own, that We, who are concerned in Judicature in this Reign, ought to ascribe less Merit to ourselves for our Care of Property, than most of those who went before us. We run no Hazard in doing of it: No Man has Cause to think he shall be ill look'd upon for giving his Judgment for the Subject according to Law, tho' it be against the Interest of the Crown.

No Man can think more hardly than I do, of the Arbitrary *shutting up of the Exchequer*, as it is commonly called, which was the unhappy

happy Occasion of raising the present Question: No Man can have more Consideration for the Persons concerned; I mean Those who only trusted the Goldsmiths with their Money, and had no Share in the Temptation to trust, from the unjust and unreasonable Profit which was made from the Crown.

But I think the Word *Property* could hardly be brought into any Case less apply than it is into this.

There has been no Difference of Opinion, as to the Interest and Property which the Subject takes by the Letters Patent, amongst the Judges who have argued in this Court.

We are all agreed that the Subject has, in this Case, all the same Remedies for recovering his Right, which in any such Case the Common Law of *England* did ever allow, or which are given to him by any Statute; so that the Subject is as safe in his Property, and as secure in the Method of coming at it, if it be detained from him, as by the *English* Constitution he ought to be.

The only Question is, Whether This be such a Remedy as the Law allows, for recovering from the King the Arrears, and growing Payments of the annual Sums in Question?

If it be not, I am sure None of Us ought to make the Parties Case better than the Law has made it. We must judge of Property according to the Rules which the Law has fixed, and can make no new Ones, nor invent new Remedies, however Compassionate the Case may appear, or however Popular it may seem to attempt it.

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The Question then is, If an annual Sum be granted by the King, under the Great Seal, out of any Branch of the Revenue, to a Subject and his Heirs, in the Manner of these Grants, and the annual Payments happen to be in Arrear; Whether by any Law, now in Force, the Party may come to the Barons of the Exchequer immediately, and They upon Prayer to Them, may inroll and allow the Letters Patent, and may thereupon order the Treasurer and Chamberlains to pay, out of the Exchequer, the Arrears, and also the growing Payments for the Future?

I think it may be proper to premise, that We are not now speaking of the Exchequer in general, as it comprehends that great College of the Revenue made up of all the Officers of the upper and lower Exchequer; nor of the Jurisdiction of the Exchequer-Chamber before the Lord Treasurer and Chancellor; nor of the Court of Equity before the Treasurer, Chancellor and Barons; but only of the Authority of the Court of Pleas holden before the Barons: Nor is the Question now of the Barons Power over the Receivers, Collectors and other Officers of the Revenue; but of their Power over the King's Treasure, when it is lodged in the Receipt of the Exchequer, and over the Treasurer and Chamberlains, in whose Custody it is.

In speaking to this Matter, I shall proceed by these Steps:

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First, To observe that no Authors Antient or Modern, who have wrote of the Jurisdiction and Business of the Court of Exchequer, have mentioned any such Power, to be lodged in the Barons of the Exchequer, as will be sufficient to warrant the Judgments in these Cases.

Secondly, That these Judgments cannot be defended by any Thing which I can find, upon the best Search I can make, in any Records or Acts of Parliament:

Nor *Thirdly*, By any Authorities in our Law Books.

As to the *First*, I will not go about to repeat a Catalogue of Writers, who have published particular Discourses of the Court of Exchequer. My Lord Chief Justice of the Common Pleas was very large in this Matter, and I will avoid the Affectation of naming them over again: I believe I have perused all of them. I have also look'd over several Manuscripts, yet unpublished, treating of that Court, which were written in the Time of King James the First, and King Charles the First: And I can no where find the least Mention of any Power in the Barons, to command the Issuing of any Money out of the Receipt of the Exchequer.

Since then so many Authors of Learning and Judgment have set themselves to write, with expresse Design, of the Jurisdiction of the Court of Exchequer, and not One of them but does treat in particular of the Power of the Barons, in bringing in the Treasure and Revenue of the Crown, and of their Power over it whilst it is *intransitu*, tho' some of them more largely than others; and yet there is not one Word to be found in

any

any of them, which implies a Power in the Barons over the Treasure, when it is once lodged in the Receipt; What can be more reasonably inferred, than that such a Power was wholly unknown to Them?

It must be admitted, that the Power to command the Issuing of the King's Treasure is of the highest Nature, and of the greatest Consequence; and therefore it cannot be believed that it was forgotten by all of them, or if it had been remembered, that it could be passed by without Remark or Observation.

By what was said in some of the Arguments in this Case, it seemed to be taken as if the Barons of the Exchequer had been invested by Law with a general Superintendency over the Treasure of the Crown, and were to take care to see it distributed and answered to all such, at least, as made any just Demand upon it, whether it was or was not brought into the King's Coffers: But this is to make them much greater Officers than the Law has yet made them.

My Lord Chief Justice Coke, when he comes to treat of the Court of Exchequer in his fourth *Instit.* c. 11. seems to choose out two antient Authors, who had wrote of that Court, as the Foundation of his Discourse; which is, for the most part, as a Commentary upon Them: I mean Britton, and the *Mirror of Justice*.

Britt. c. 1. Britton's Account is shortly this; Our Treasurers and Barons from henceforth shall have Jurisdiction of all Causes, which touch our Debts, and our Fees, and the Incidents thereof, and to take Conuzance of Debts which are

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owing to our Debtors, that we may come at our Debts the sooner.

When my Lord Chief Justice Coke has set down these Words, he then proceeds to set down the Words of the *Mirror*; viz. *That the Exchequer is only ordained for the King's Profit, to hear and determine Torts done to the King and his Crown, in Right of his Fiefs and Franchises, and the Accounts of Bailiffs, and of the Receivers of the King's Money, and the Administrators of his Goods, by the View of a Sovereign who is the Treasurer of England.* *Mirr. Cap. 1. § 14.*

These Words of the *Mirror* are a short, but effectual Description of the Court of Exchequer; and my Lord Chief Justice Coke comments upon and expounds them in their full Extent: Nothing falls from him as if this Account were defective, or did include only one Part of the Business of the Court.

In the *Mirror*, cap. 1. § 14. We are told what is the Use of the Seal in the Exchequer, viz. *To make Acquittances, and to Seal Writs and Etreats under green Wax, issuing out of this Place pour le Prou le Roy, i. e. for the King's Profit.* The Use of the Seal to command the Treasurer and Chamberlains to issue Monies out of the Receipt, was unknown when the *Mirror* was wrote, or this was a very defective Account.

II. And as these antient Authors have thus confined the Business of the Court, so it does appear, in the *Second Place*, by the antient Records, that the Barons of the Exchequer have not intermeddled in other Matters, than what my Lord Chief Justice Coke,

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and

and these antient Authors assign to their Jurisdiction: Unless as their Power has been from Time to Time enlarged by Acts of Parliament; or in Cases where they have acted by particular Authority given to them by Writs under the Great or Privy Seal; or where they have acted by Virtue of the King's Answer indorsed upon Petitions made to his Person, either in or out of Parliament; which Answers to such Petitions generally order a Writ to issue out of Chancery, which gave a Jurisdiction to the Treasurer and Barons respectively, to act according to the Effect of the Answer. And upon this Ground it is, That amongst the Abuses and Usurpations in the several Courts, which are enumerated in the *Mirror*, in that Chapter which is entitled *Abusyon de la Commen Ley*, This which follows is mentioned for one; *Abusyon est que les Ministres del Escheque eient Jurisdiction de autre Chose que des deniers le Roy, de ses Fiefs, & ses Franchises, sans bre Original de le Chancellery south blanche Cere.*

Cap. 5.
§ 1. N^o
27.

It is so far from appearing by any antient Author or Record, that the Barons of the Exchequer had such a Power as is contended for in these Cases, that on the contrary it appears, their Authority was very much restrained in that which was immediately their Business, viz. Matters of Account depending before them; in which they could make very few Allowances, however just and reasonable in themselves, without a particular Authority under the Great or Privy Seal.

By the Statute of Rutland, 10 Ed. 1. Notice is taken, that upon Suggestion of the King's Bailiffs, Writs for divers Allowances
had

had been made to the King's grievous Damage; It is therefore ordained, that of such Allowances to be made from thenceforth, View shall be in our Exchequer, and the same View being faithfully made, the same Treasurer and Barons shall certifie Our Chancellor of the due Allowances so to be made, and that Writs of Allowances shall be made according to the same Certificate.

The Statute directs that it should be considered in the Exchequer, what Allowances were proper to be made, and that the Treasurer and Barons should certifie the Lord Chancellor what they found was justly to be allowed; and after all, the Great Seal was to issue thereupon to warrant the Allowance.

*see Med. Buxey
chap. 23. 1. 17. page
673.*

Here was a new Use appointed for the Seal of the Exchequer, viz. to make the Certificate; but the Parliament would not innovate so far as to make the Exchequer Seal more than a Certificate, whereupon the Chancellor might issue a Writ of Allowance under the Great Seal.

This would have been a strange Circuitry if it had been imagined at that Time, that the Barons could have made the Allowance by their own Jurisdiction, and have sent a Writ accordingly to the Treasurer and Chamberlains.

There are many Instances to be found how much the Jurisdiction of the Barons was restrained, even in Particulars; which one would think to be most properly of their Cognifance.

I will at present only instance some few, which are printed in Mr. Ryley's *Placita Parliamentaria*.

The Executors of *John Bafin* petition the King, that whereas the King *teneatur dicto Jobi* in 34 *l.* for Wax delivered to his Use, by the Hands of *Roger Lisle* Clerk of the Great Wardrobe, and for which they had a Bill signed by the then Master of the Great Wardrobe; and that a like Sum of 34 *l.* was demanded of the said *Bafin* by Extents of the Green Wax, *Quod Placeat D'no Regi dictorum debitorum hinc inde debitam facere Allocacionem.* The Answer is, *Habeant bre de Cancellaria Thes. & Baronibus de Stacc. quod si ipsi inveniunt debitum esse clarum quod tunc faciant Allocacionem de uno deb' ad aliud.* 35 Ed. 1. Ryley 334.

An Answer of the same Nature is given to another Petition, very much of this kind, made by the Executors of *Robert de Basinges.* Ryley 326.

The Citizens of *York* Petition for an Allowance of 8 *l.* 4 *s.* 10 *d.* and 102 *l.* 12 *s.* 14 *d.* with which they are charged in the Exchequer, for Wine sold to them by *Robert de Dacre* the King's Butler, who had acknowledged the Receipt of the Money before the Barons. The Answer is, *Mandetur per bre de Cancellaria Thes. & Baron quod scrutatis Rotulis videant si recognitio sit sic facta ut dicunt, tunc exonerentur Cives de eadem pecunia, & Rob'tus de Dacre inde oneretur.* 33 Ed. 1. Ryley 252.

In the same Year, Ryley 248. *Harcla* petitioned the King for an Allowance of his Arrearages for the Time when he was Sheriff of *Cumberland*, for that he could not levy the same by reason of the Waste and Destruction which the Scots had made; And also for

an Allowance of 38 l. which the King owed him for Wool taken to the King's Use: And the Answer is, *de Damnis que sustinuit habeat gratiam per bre' de Canc' Thesaurario & Baronibus de Scaccario dirigendum secundum Discretionem Thesaurarii & Baron'. Et de Lanis captis examinentur & allocentur in Arreragiis suis. Et super hoc fiat breve de Cancellaria Thesaurario & Baronibus de Scaccario.*

In the same Book pag. 249, 250, 258, there are Petitions for Allowances of Sums laid out for the King's Use, and Writs under the Great Seal ordered, requiring Allowance to be made by the Treasurer and Barons.

Plomier petitioned that he might be permitted to account for the Time he was Custos of the Templars Land in Essex; & unde incepit computari coram Rogero de Wingfield sub cujus sigillo Rotuli sui adhuc restant signati. The Answer is, *Habeat bre' de Canc' Thes. & Bar' de Scac' in quo contineatur ista Peticio, & per idem bre' mandetur quod inspecta Peticione, si suggesta vera sint, procedant ad computum suum audiend' & ulterius faciant in hac parte Justitiæ complementum.* 14 Ed. 2. Ryley 419.

Upon Petition of the Tin Merchants, to be allowed two Days for Payment of their Coinage, this being also certified to be for the King's Profit; The Answer is, Let there be a Writ to the Treasurer and Barons for that Purpose, and the like to the Sheriff of Cornwall. Ryley 248.

Upon Petition for Installment of Debts, the Answer is sometimes, Let a Writ go commanding the Treasurer and Barons to do it, *juxta discretionem*, Ryley 291. and at other times, *quod scrutari faciant debita, & inde certificent Regem.* 3

Regem, & quod interim habeant respectum, sed non atterminetur sine Rege. Ryley 254.

And that the Jurisdiction of the Barons was originally very restrained, will appear yet plainer, by the Statute made the 26th of *Edw. 1.* Ryley 225. Whereby it is enacted, *that the Treasurer and Chamberlains of the Exchequer, make a Roll indented of all Sums of Money delivered for the King's Use without Warrant since the Beginning of the War between the King and the King of France, one Part to remain with them in the Exchequer, and the other Part with the Chancellor, pro Warranto suo ad faciend' super hoc Br'ia in debita forma predictis Thes. & Camerariis de predictis parcellis.*

I might proceed to very great Numbers of Instances where the Subject was put to his Petition, for the Allowance of just and reasonable Pleas by way of Discharge, upon accounting in the Exchequer; some few I thought necessary to mention, but I will not enlarge on this Matter, because I think the Statute 5 R. 2. cap. 9. which Increased the Authority of the Court of Exchequer in this Point, shews plainly how defective the Jurisdiction of that Court was, before that Time, even in that which seemed absolutely requisite for the doing Justice upon Accounts.

That Statute takes Notice, *that Persons impeached in the Exchequer of Debts and Accounts, tho' they have offered to plead for Discharge of those Impeachments according to Law, have not always been received thereto heretofore, without having express Commandment by Writ or Letter of the Great or Privy Seal, to their Mischief and Delay, and no Advantage to the*
 I King

King: And it is thereby ordained, that the Barons shall from henceforth have full Power to bear every Answer of every Demand made in the Exchequer, so that every Person that is impeached or impeachable of any Cause by himself, or by any Person, shall be from henceforth received to plead, sue, and have his reasonable Discharge, without tarrying for, or suing any Writ or other Commandment.

By this Act of Parliament, a Power for the Future is given to the Barons of the Exchequer to allow a lawful Discharge when pleaded. The natural Inferences which were to be drawn from this Statute were so plain, that to elude the Force of them, two Things have been urged in the Speaking to these Cases.

1st, That this Act gives no new Power, but was only made in Affirmance of the Common Law.

2^{dly}, That this Act might be extended, so as to give an Authority to the Barons of the Exchequer, to relieve the Subject in the Cases which we have before Us.

But I think both of these Assertions are Mistakes; at least it must be yielded, upon second Thoughts, that if this Act was merely a Declaration of what was Law before, such Declaratory Laws are not to be extended by equitable Constructions beyond the Words themselves.

*As to the First, to prove that this Act did not introduce a new Law, my Lord Chief Justice Coke, in his fourth *Inst.* fo. 110. has been cited: I confess in that Place he says, two Things upon Occasion of this Statute.*

1st,

1st, That it does appear by this Statute that the Parties ought, by Law, to have been received to have pleaded their Discharges, without any such Writ or Letter.

2dly, That from thence it may be collected, that such Course of the Exchequer as tends to the Disquietness, Mischief, and Delay of the Subject, and no Advantage to the King, is against Law.

The first of these two Conclusions of His upon this Act, is contrary to his Observations immediately preceding in the same Page, viz. That so great Care was taken by the Court of Exchequer, (which is the Center of the King's Revenue and Profit,) that no Man might plead for his Discharge of any Debts, Account, or other Demand, without having an express Commandment by Writ or Letter of the Great Seal.

As to his second Conclusion, it is not very easy to apprehend what is meant by saying, That a Conclusion may be drawn from this Act, that such Course of the Exchequer as tends to the Delay of the Subject, and no Advantage to the King, is against Law. If the Meaning be no more, than that such Course is fit to be remedied by a Law, it may be justly collected from the Act, which was made expressly for that Purpose: But that it can be inferred from that Act, either that any Thing can be the Course of the Exchequer which is against Law; or that the Act declares it to be against Law, to refuse the receiving such Pleas without being authorized under the Great or Privy Seal, may be denied upon good Grounds; because there is
I
nothing

nothing to be found in that Act, to warrant either of those Inferences.

1st, That the Act was introducing of a new Law, as to one Point, *viz.* the admitting of Persons to plead by Attornies in the Exchequer, (which they could not do before, unless by a special Writ under the Great Seal,) is agreed by my Lord Chief Justice Coke, and is plain that it was so, by the *Mirror of Ju-* ^{4 Inf. 110.}
stices, Abusion N^o 29.

2^{dly}, The Words of this Statute are enacting and not declaratory. They give a new Power; *From henceforth the Barons shall have Power, and every Person that is impeached, shall be from henceforth received.*

3^{dly}, The Words seem to be mistranslated from the Original *French*, *touts voyes n'ont mye este receutz*, which should not be rendered *have not always been received*; but thus, *always have not been received*, that is, *have never been received.*

But, 4^{thly}, The Petition of the Commons upon which this Act is framed, and which is *Rot. Parl. 5 R. 2. N^o 97.* shews this Matter plainly beyond all Question.

The Petition does not complain of any Abuse in the Barons, or Officers of the Exchequer, but of a Defect in the Law, which the Commons pray may be amended for the Ease and Quiet of the King's People.

And it is remarkable, that as the Preamble of the Statute is drawn up, as far as it goes, almost in the Words of the Petition; so the enacting Part is framed in the Words of the King's Answer. As the Words are printed in *English* in the Statute-Book they run thus; *When they offered to plead in Dis-*
E *charge*

charge according to Law, they have not been always thereto received heretofore: But the Original French Words of the Petition are, *n'ont mye este a ce receutz nient foits devant ces heures*, i. e. they have never heretofore been received; which, as to this Point, is a very material Variance, and shews plainly how the French Words in the Statute itself ought to have been translated.

The Petition does in express Terms give as a Reason why they had heretofore never been received; viz. that the Barons of the Exchequer declared, that they had no Power to hear the Pleas and Answers of the said Impeachments without Writs or Letters of the Great or Privy Seal, commanding the Treasurer and Barons to do Right to the said Parties impeached. This is what the Barons had then declared to be Law; nor is this Declaration complained of by the Petition, nor censured by the Parliament; but a Law is made to remedy this for the Future, giving the Barons a new Power: And therefore this Act, one need not doubt to say, was more than an Affirmance of the Common Law.

The next Chapter of this Statute, 5 R. 2. cap. 10. is a farther Explanation of the Matter we are now speaking of.

Notice is taken, that Persons retained to serve the King, received Money at the Receipt, or elsewhere by Assignment, which Sums had been put upon them as received by way of Loan; and altho' they, or their Heirs, or Executors, have demanded to be admitted to account of the said Sums, the same had not been granted, but they were constrained to pursue their Grant by the
Great

Great or Privy Seal to the Treasurer and Barons, commanding them to account with them in that Behalf, &c. And it is ordained, that of all Persons, who shall be retained to serve the King, their Covenants shall be put into Writing, and sent into the Exchequer to remain on Record: So that when Persons come to account thereof at the Exchequer, they shall be received, and have Allowance on their Account, according to the Contents of their Covenants; so that by the Sight of the same the Barons shall do right to the Party, according as Reason demandeth. And if any thing be due to them on the said Account, that thereof, by Certificate of the same Exchequer, the Treasurer and the Chamberlains shall make Payment or Assignment, without any other Warrant by the Great or Privy Seal.

This shews what the Course was before; and in this particular Case makes a Provision which is wholly new, viz. that upon a Certificate of the Barons the Treasurer and Chamberlains may pay: In all other Cases the Law is left open, and a Great or Privy Seal is requisite to warrant a Payment, notwithstanding any Certificate of the Barons.

So much to shew the Stat. 5 R. 2. did introduce a new Law.

As to the other Thing which was mentioned, as if the Stat. 5 R. 2. might be extended by an equitable Construction to give the Barons Power to order the Payment of Money out of the Receipt, in such Manner as in the Cases now before the Court; I must say I cannot see any the least Colour for such a Notion.

The Power is most directly restrained to the receiving of Pleas in Discharge of Persons

impeached for Debts, or Accounts; and can never be extended to Cases where Parties come as Plaintiffs, to recover Demands originally against the King: Nor is there the Authority of any Law-Book pretended to warrant such Interpretation.

If then the Power of the Barons was so short and restrained, in Matters relating to the Taking and Stating the Accounts of the Revenue, (which is acknowledged to have been their antient and proper Business,) that they were in so very many Cases to expect an additional Authority under the Great or Privy Seal; can it be thought, that at the same Time they were intrusted with such a Jurisdiction as is now contended for, of sending Orders requiring the Treasurer and Chamberlains to make Payment at the Receipt, when Persons demanded of them to inroll and allow their Grants and order such Payments?

I have caused the Liberate Rolls, and the Bundles of Petitions at the *Tower*, to be searched from the Beginning of King *John's* Time, as low as the Records there go, and have had some Extracts made of them; and during all that Time, I cannot find that any Payments were made at the Receipt of the Exchequer, but by Warrant under the Great or Privy Seal.

There are infinite Numbers of Writs to be found, for Payment of Sums of Money for Wages, for Service done, for Debts owing, and for almost all Occasions which can be imagined to occur; but for every one of these, how small soever, the Warrant is either a Great or Privy Seal.

In

In like Manner, the Warrants for Payment of all Annuities, Fees, and Salaries, tho' granted by Letters Patent under the Great Seal, yet were, from time to time, directed to be paid by Writs under the Great or Privy Seal.

If the Payment was, by the Letters Patent, to be at the Receipt of the Exchequer, the Liberate went to the Treasurer and Chamberlains: If it was to be paid by the Customers, or the Sheriff, there was a *Liberate* directed to the Officer who was to pay, and a Writ *de Allocatione facienda*, directed to the Treasurer and Barons, to allow of such Payment by the Sheriff or Customer, which Writ of Allowance recited the *Liberate*. Reg. 192, 193.

Rot. lib. 43 H. 3. m. 1. There is a *Liberate de Thesauro nostro dilecto & fideli nostro Hugoni de Bigod, Justiciario nostro Mille Marcas, que sibi per Magnates de Concilio nostro sunt provis, percipiend per Annum ad Scaccarium nostrum, ad se sustentandum in Officio Justiciarii nostri.*

The great Station of the Person, and the Authority by which the Annuity was granted, was not enough without a particular Warrant for Payment from the King under his Seal.

So all along in the *Liberate* Rolls, 55 H. 3. m. 1. 1 E. 3. m. 3. 1 E. 2. m. 4. 4 E. 3. m. 3. &c. there are *Liberates* for the Salaries of Judges: *Liberate de Thesauro nostro dilecto & fideli nostro Stephano Heyne, uni Justiciariorum in Banco, vigint libr de Terminis Mich' prox' praterito, de annuo feodo suo 40 librar, quas ei concessimus percipiend per Annum ad Scacca-*

Scaccarium nostrum ad Sustentationem suam in Officio Justiciarum, quam diu steterit in eodem. Nay the Barons of the Exchequer themselves in those Ages, never once thought of directing the Treasurer and Chamberlains to pay Annuities and Salaries, tho' granted to themselves under the Great Seal; but pursued the same Method that others did, and procured Liberates for their Salaries of 40 Marks, as all other Subjects, in the like Cases, did.

Rot. lib. 1 Ed. 2. m. 2. Liberate Will'o de Carlton, uni Baron' nostrorum de Scaccario nostro, vigint' Marcas de Termino Pasche prox' preterito, de annuo feodo suo quadragint' Marcarum, quod ei concessimus per Literas Patentes percipiend' in Officio suo supradicto.

The like are to be found, 4 *Ed. 1. m. 3. 1 R. 2. m. 15. 1 H. 4. m. 7. 1 H. 5. m. 6.* And when Payment was not made according to the Command of these Writs, the Method was not then to go to the Barons of the Exchequer, but to apply to the King by Petition for another Writ to enforce the Former. *Rot. lib. 2 Ed. 1. 20. m. 4. Mandamus vobis quod dilecto & fideli nostro Rogero de Brabanzon, nuper Capitali Justiciario Edwardi, quondam Regis Anglie, Patris nostri, ad placita coram eodem Patre nostro, Liberetis juxta tenorem Brevium dicti Patris nostri de Liberate, que penes vos inde resident in Scaccario antedicto.*

And the like Writ may be found to enforce a former Liberate in the Case of the Earl of Oxford, *Rot. lib. 1 Ed. 3. m. 1.* and in other Places.

The like Course also appears to be taken in the Case of the converted Jews. 2 *Ed. 2. Ryley 517.*

I will make Mention of one more Precedent, which is the Letters Patent granted 2 H. 6, which are to be found in the Patent Rolls of that Year, and also in a Schedule annexed to the Parliament Roll. In which the King takes Notice of the Treaty of Peace between his Father and Grandfather, the Kings of *England* and *France*; and also of the Marriage Articles of his Mother, Queen *Katherine* the *French* King's Daughter, with King *Henry* the Fifth, *A. D.* 1420; whereby it was agreed, that she should have for her Dower to the Value of 40,000 *Scuta per Annum*, of which two were to make a Noble; which Treaty and Articles were confirmed in Parliament: And then proceeds, by Consent of Parliament, to grant to the Queen divers Lands, Parcel of the Dutchy of *Cornwal*, and County Palatine of *Chester*, and also several Annuities out of the Alnage, and 2274*l.* 18*s.* 1*d.* out of the first Profits of the Sheriffs and Escheators at the Receipt of the Exchequer, and out of any other Revenue that should be order'd there to be paid by the Hands of the Treasurer, in full of her Dower, until the King, or his Heirs, should grant to her Lands and Tenements to the same Value: *Et quod eadem Mater nostra habeat tot & talia Brevia de Liberate Carren', & Allocat' Dorman', ac alia Brevia & Warran', quot & equalia ei in hac parte, pro solutione summarum sibi, ut premititur, concessarum & assignatarum, & pleniori executione premissorum, necessaria fuerint & opportuna: Et quod Cancellarius noster Anglie, ac Custos Privati Sigilli nostri, & hered' nostrorum, pro tempore existen', Brevia & Warranta illa, de tempore in tempus,*
quando-

*quandocunque & quotiescunque ex parte prefat'
Matris nostre rationabiliter fuerint requisit',
tenore presentium fieri faciant indilato.*
Per ipsum Regem in Concil' in Parl.

It appears by these, and the former Records mentioned, what was the antient and constant Method of Proceedings in these Cases; and that it was not enough to have Letters Patent under the Great Seal, for granting the Annuity or Sum, but that there must be an Authority under the Great Seal or Privy Seal, to warrant any Payment thereupon: Otherwise the Parliament, when they had been making such an extraordinary Provision for the Security of the Queen, would have taken a shorter Method, and have sent her to the Barons of the Exchequer for ready Payment in case of Arrears.

I might also mention the Case of another Queen, *Johan* the Relict of *Hen.* the 4th, who in her Petition in Parliament, in the second Year of *Hen.* the 6th, *Rotl. Parl. 2 H. 6. 11, 35.* (whereby she prays to be restored to her Dower, which had been seized in the seventh Year of *Hen.* the 5th, and was afterwards ordered to be restored in the tenth Year of his Reign, but could not be done effectually without the Assistance of an Act of Parliament,) concludes with a Prayer, *that for the Time to come she may have, En la Chancellerie nostre Seigneur le Roy, & ses Heirs & Successeurs, si bien Lettres de Liberte Currentes, & Allocate Dormanz, come autres Lettres Patents, & Choses en celle partie al dite Roynne besoignable;* which is granted.

This was then the Method, and has been continued to this Day; and no Treasure is, or can be issued out of the Receipt, without such a Warrant under the Great or Privy Seal.

'Tis true, in Time *Liberate's* Current, and Dormant Writs of Allowance grew more common, so that the suing out of new Writs in every particular Case became less frequent. And it is also true, that of later Times, more General Privy Seals have been brought into Use, authorizing at once the issuing of several Payments; which has been practised especially since the Beginning of the Reign of Queen *Elizabeth*. But the thing in Substance is the same: No Money is issued out of the Receipt, without the Authority of the Great or Privy Seal; nor is there any more waiving the applying to the Person of the King than before: No Payments being made upon those General Privy Seals, but by Virtue of the King's particular Warrants counter-signed by the Lord Treasurer, or Commissioners of the Treasury.

I have shewn what were the Methods anciently taken by Subjects for obtaining Payment of Annuities granted by the Crown; and that these Methods, in the Manner I have mentioned, have been continued down to this Time.

It has also been observed, how narrow the Jurisdiction of the Barons of the Exchequer was at Common Law; unless where their Authority was enlarged by Writs under the Great Seal, or by the King's Answer to Petitions in Parliament: And that the Enlargement of their Jurisdiction by the Stat. 5 R. 2. added

no new Powers, in Relation to the Matters in Question.

The next Statute which does considerably enlarge the Jurisdiction of the Exchequer, is that of 33 H. 8. c. 39; which gives several new Powers, of great Consequence, to the Exchequer, and to several other Courts, which were then in Being. But I did not observe that it was insisted on, that any of the Clauses of that Act extend to this Case, and therefore I will not go about to answer what is not, nor I think can be objected.

Indeed, if I did not mistake my Lord Chief Justice, He insisted that the Power which the Barons of the Exchequer have taken upon them to exercise in this Case, must be warranted by the Common Law, as originally incident to a Court of Revenue.

But upon the best Search I could make into the Records of the Exchequer, I have not found any thing which does in the least countenance this Power supposed originally incident to a Court of Revenue, which has been exercised in these Cases, but was never exercised before: unless about the Time of the dissolving of the Court of Augmentations, in the first Year of Queen Mary, and the annexing it to the Court of Exchequer; when somewhat of this Nature was done in the Court of Exchequer, with respect to some Cases which were formerly under the Survey of the Court of Augmentations; the Reason of which I shall shew hereafter; and that the same is no way applicable to the Causes before Us.

I do not forget that it was urged, as of Weight to prove this Power in the Barons, that

that the Course is, at the End of every Term, for the Barons to send *Liberate's* down to the Receipt for Necessaries of the Exchequer. But of that an Account was given by my Lord Ch. Justice of the Common Pleas; and I shall shew yet more clearly, that the Writ imports no more than a Certificate of the *Quantum* of the Expence, and has been never look'd upon as a Warrant for the Payment.

It is strange, if this Power was vested in the Barons by the Common Law, that no Subject should once apply to them for Relief. It is plain there were Occasions for such Applications: Annuities we see were in Arrear, and Writs of *Liberate* were disobeyed; and yet nothing does appear, before the first Year of Queen Mary, that the Barons sent down Writs to the Treasurer and Chamberlains to do their Duty, and issue Money out of the Receipt.

Since the 15th of Queen Elizabeth, when Sir Thomas Wroth's Case was, one hundred and twenty Years are past; and since that Time, especially since the Beginning of the Reign of King James the First, more and greater Annuities and Pensions have been granted than from the Foundation of this Monarchy, and with as full and liberal Clauses as in the Cases now in Question; and Annuities and Pensions have been worse paid than in antient Times; yet no Man, since that Time, has come to the Barons to recover his Arrears, according to these Precedents of Neville and Wroth; And yet, the Remedy (admitting the Law to have been so settled in those Cases) is more ready and easy to be had than in any

Action against a Common Subject in any Case. Admitting this Jurisdiction might have slip't unobserved in the more antient Times; yet after two Cases settled so solemnly as those of *Wrotb* and *Neville*, it seems very strange that no Patentee, who was unpaid, and could not recover the Arrears of his Annuity any other Way, should once think of desiring the Barons to enroll and allow his Letters Patent, and order Payment to him but of the Receipt.

As therefore a constant and fixed Course of the Exchequer is the Law of that Court, and indeed the Law of the Land; so the negative Argument hath its Force, that what has not been at all practised in the Court, especially in relation to Cases which happen very frequently, cannot be taken to be the Law, or Course of the Court.

So far are we from having infinite Precedents, (which, by what is said in the Case in *Plow. 321. a.* and *Lane's Case, 2 Co. 16, 17.* and in *Agard's Case, Mo. 563.* appear to be requisite to give a Practise the Denomination of the Course of the Exchequer,) that we are to seek for a Precedent; except some few Cases, which, as I said, happened upon the Union of the Court of Augmentations to that of the Exchequer. And of these not one has been cited in any Law Book as an Authority to prove this Jurisdiction in the Exchequer; which is the Matter for which they have been so much urged in the arguing of these Cases.

III. And now I will proceed to the Third Thing I mentioned, which was, That as
none

none of the Authors, who wrote *ex professo* upon the Jurisdiction of the Exchequer, asserted any such Power as this in the Barons, and as nothing did appear in any Act of Parliament, or by any Record, which did make out such a Power; so I conceiv'd, that no Authorities were to be found in any of our Law Books, which did warrant the Judgments in these Cases. I shall reserve myself as to the Cases of *Neville* and of *Wroth*, and the Precedents about that Time till hereafter; and shall at present speak to the other Cases, which have been urged as Authorities, more antient in point of Time.

And those, as I remember, were three; *Everle's Case*, the *Abbot of Wardon's Case*, and *Margery Parker's Case*.

Some others were spoken of, but they are (as I think) directly against what they were brought to support; and as these three only have been insisted on by my Lord Chief Justice, I shall not think it worth while to take any Notice of the Rest.

Everle's Case was 33 *Ed. 1.* and is in *Ryley* 251. The Case is this: He petitions King *Edward* the First, that He would command that an Annuity of ten Marks, which King *Henry*, Father of the King who now is, had granted to him, and *John* his Brother, *Et quod Donum Rex nunc eis per Literas suas confirmavit, Et unde habet bre' currens de Liberate in custodia Thesaurarii & Camerariorum de Scaccario*, should be paid to him with the Arrears. — *Ita responsum est, Habeat bre' de Canc' Thes. & Baronibus de Scaccario quod videant Cartam & faciant Justitiam, habito respectu ad breve currens.*

Upon

Upon this Case two Inferences were made.

1st, That the Court of Exchequer might hold Plea of an Annuity granted by the King, and might relieve the Party.

2^{dly}, That the Court of Exchequer might compel the Treasurer and Chamberlains to make Payment of such an Annuity.

Let us see if either of these Conclusions are warranted from this Case; and whether upon Examination it will not appear to be a strong Authority to shew, that there is no legal Course to enforce the Payment of an Annuity, tho' granted under the Great Seal, without applying to the Person of the King by Petition.

No Circumstance is wanting to make that Case stronger than the Cases before Us.

There was a Grant of an Annuity under the Great Seal from the King's Predecessors, as there is in this Case: There was also a Confirmation from the King then reigning, which is wanting in the Cases before the Court: And more than that, there was a *Liberate Current* lodged with the Treasurer and Chamberlains.

If in any Case of a Demand of the Arrears of an Annuity, granted by the Crown, the Party might go to the Barons for an Order for Payment, *Everle* was ripe for it.

But such a Method of enforcing Payment was unknown at that Time, as has been shewn already, and therefore *Everle* proceeds in the common Course: He applies by Petition to the King, and the King endorses the Petition, that a Writ under the Great Seal

Seal should be directed to the Treasurer and Barons, empowering them to consider the Letters Patent, and do him Right, respect being had to the *Liberate*.

No Jurisdiction in the Barons can be inferred from thence, nor Power of commanding the Treasurer. The Great Seal is the Commission by which They act. The same Writ which impowers the Barons to consider the Letters Patent, impowers the Treasurer to issue the Money; and that not as the Barons should appoint, but it was to be with Respect to the *Liberate*, which was to determine where the Payment was to be made; whether at the Receipt of the Exchequer, or by levying Tallies on the inferior Officers concerned in the Receipt of particular Branches of the Revenue.

But to take off the Force of such an Answer, it was urged, That this Petition was not a *Petition of Right*, but of *Complaint* against the King's Officers. And to shew that it was so, it was said, that if it had been a *Petition of Right*, it must have had another Indorsment, viz. *Soit droit fait al partie*, and then have been sent into Chancery; and that in such Cases the Petition is the Original upon which the Proceeding is; and that *Petitions of Right* must be so answered.

As to this; In the *First Place*, there needs not much Labour to shew that this was not a *Petition of Complaint*. It imports nothing like it. The Petitioner states his Case; He prays what he wanted, and what was necessary, and it was granted him; that is, a Warrant under the Great Seal, empowering
the

the respective proper Officers, the Barons to see if he had Right, and the Treasurer, if it were so, to pay him his Arrears. No Body is complained of in the Petition, and no Body is blamed in the Answer: A Writ is to go, the Charter is to be seen, and Justice is to be done.

In the *Second Place*, the Answer given to this Petition is a very proper Answer to a *Petition of Right*. And therefore there was no Ground to say that this was not a *Petition of Right* because the Answer was not general, *Soit droit fait*.

There are more Petitions to the King in *Ryley's Placita Parliamentaria*, than in all the Books which are printed, and throughout the whole Book there is not one in twenty which is so answered; and yet nothing is so plain as that these were *Petitions of Right*.

It were endless to cite Particulars, there being scarce a Leaf in the Book which does not shew what I assert.

And if more Authorities were wanting, the Bundles of Petitions in the Tower, which I have caused to be look'd into, are full of *Petitions of Right*, otherwise answered than in those general Words.

The Truth is, the Manner of answering Petitions to the Person of the King was very various: Which Variety did sometimes arise from the Conclusion of the Party's Petition; sometimes from the Nature of the Thing; and sometimes from Favour to the Person: And according as the Indorsement was, the Party was sent into Chancery, or the other Courts.

If the Indorsement was general, *Soit droit* 3 Inf.
fait par partie, it must be delivered to the Chan- 215, 216.
 cellor of England, and then a Commission was 13 Co. 19.
 to go to find the *Right* of the Party; and Mo. 639.
That being found, so that there was a Re- Co. Ent.
 cord for him, thus warranted he is let in 419. b.
 to interplead with the King. But if the In- 422. a.
 dorsement was special, then the Proceeding
 was to be according to the Indorsement in
 any other Court. This is fully explained by
Stamford in his Treatise of the *Prerog.* cap. 22.

The Case *Mich. 10 H. 4. 4. N^o 8.* is full as Fitz. Tra-
 to this Matter. The King recovers in a *Quare* verse 51.
Impedit by Default against one who was never Bro. Pet.
 summoned; the Party cannot have a *Writ* of 34.
Deceit without a Petition. If then, says the
 Book, He concludes his Petition generally, *Que*
le Roy luy face Droit, and the Answer be gene-
 ral, it must go into the Chancery that the
 Right may be inquired of by Commission;
 and upon the Inquest found an Original Writ
 must go directed to the Justices to examine
 the *Deceit*; otherwise the Justices, before
 whom the Suit was, cannot meddle: But
 if He conclude his Petition specially, *That it*
may please his Highness to command the Justices
to proceed to the Examination, and the Indorse-
 ment be accordingly, *That* had given the
 Justices a Jurisdiction. They might in such
 Case have proceeded upon the Petition with-
 out any Commission, or any Writ to be sued
 out; the Petition and Answer indorsed
 giving a sufficient Jurisdiction to the Court
 to which it was directed. And as the Book
 I have mentioned proves this, so many other
 Authorities may be cited.

Ex Bund. Pet. Parl. An. 4 Ed. 3. n. 64.
 John Ibe, Abbot of Feversham, petitions the King, setting forth that his Predecessor, in the Reign of Ed. 2, in Regard of the good Service of Sir Barth. de Baddlesmere, had released to the said Sir B. B. for his Life 4 l. 16 s. 4 d. of the Rents, Customs and Services of 300 Acres which He held in Gavelkind of the Abbot and Covent; and that the Land remained in the King's Hands by the Forfeiture of the said Sir B. B.; and that the Rents and Customs were in Arrear, after the Death of the said Sir B. B., for four Years whilst the Land so remained in the King's Hands. And prays, that the King would be pleased to send to the Barons of the Exchequer, that if by Inquest to be taken it should be found that this Rent was due to the Abbot and his Successors, as the Right of the Church, after the Death of Sir Bartholomew, the King's Officers, who were in Possession of the Lands during the Minority of the Heir, might answer them the Rent for that Time. And the Petition is indorsed, *Soit ceste Peticion mande as Tresorer & Barons de l'Eschequer, que euz appellez que sont estre appellez, & oyés les reasons, facent droit.*

To the like Effect is the Answer to the Petition of Manent Franceys in the same Year, N. 9.

And as the Indorsements upon Petitions of Right were various, according to the Nature of the Case, so above all others they were different in the Cases belonging to the Revenue: And, I think, there is not an Instance to be found where such Petitions were answered, *Soit droit fait aux parties.*

Some-

Sometimes the Indorsement is, *Mandetur ista Peticio Thes. & Bar' de Scaccario & sequatur coram eis.* Ryley 408. Or, *Sequatur coram Thesaur' & Baronibus de Scaccario & ibi faciant eis justitiam super contentis in Petitione.* Ryley 408, 423.

So upon the Petition of the Abbot of *Feverisham* the Indorsement is, *Soit ceste Peticion mande devant Tres' & Barons del Eschequer, & mande a eus que oye la pleynte le dit Abbe face droit.* Ryley 646.

Sometimes, *Mandetur per breve de Magno Sigillo Thes. & Baron' de Scac' quod contineat effectum Petitionis, &c.* *Cottingham's Case,* Ryley 402.

Sometimes, *Habeat bre' de Canc' Thes. & Baronibus de Scac' quod fiat secundum formam Petitionis, & ita Rex vult.* *Walter's Case,* Ryley 259.

When there was no Doubt likely to arise of the Parties Title, as in *Aynsham's Case*, (who petitioned for Money due for Work done at *Carnarvan Castle*,) the Barons are not taken Notice of, but the Answer is, *Fiat bre' de Canc' de Liberate Thesaurario & Camerariis quod liberent ei tantam summam & onerent Hugonem Camerarium de Carnarvan.* Ryley. 251.

Sometimes the Chancellor of the Exchequer is joined: As in Ryley 249. The Bishop of *Ely* petitions the King, that one *Pecche* his Tenant, who held of Him four Knights Fees, Parcel of his Barony, had granted the same Fees to the King; and that He, the Bishop, was ready to make out his Title: The Answer is, *Sequatur coram Thesaurario, Cancel-*

lario & Baronibus de Scaccario, & si ita sit tunc Thef. & Bar. conveniant cum eo super hoc, ita quod Ecclesia conservetur indemnis, & super hoc fiat bre. de Canc. Et prius inquiratur per que servicia Maneria tenentur & de quo &c. cum omnibus circumstantiis.

Sometimes the Justices are joined, as in the Case of the Abbot and Convent of Hyde, Ryley 256. Who petition, That they had, by Mistake, acknowledged the King's Title upon a *Quare Impedit* brought in the King's Name; and pray that they might be admitted to prosecute their Right to the said Advowson, or that the King upon a gracious Fine would restore them to the Advowson: The Answer is, *Fiat bre. Canc. Thef. & Bar. de Scacc. quod vocatis Justiciariis audiant rationes Abbatis. Et si Abbas ostendere poterit coram eis per Cartas vel Monumenta vel alias Evidencias quod habet jus in dicta advocacione, tunc vult Rex quod Thef. & Bar. per consilium Justiciariorum capiant aliquem finem de Abbate & Conventu, & reddant eis dicta Advocatio non obstante iudicio inde prius reddito pro Rege.*

And in the like Manner on the Petition of Floria, the Widow of Thomas Belhouse, the Answer is, *Habeat bre. de Canc. Thef. & Bar. de Scacc. quod visa Carta sua de conjuncto Feofamento &c. faciant secundum quod de jure fuerit faciendum, & secundum quod hactenus usitatum fuerit in Regno. Et quod hoc fiat per consilium Justiciariorum.* Ryley 253.

That these were Petitions of Right of several Natures is not to be denied, and yet the general Answer is given to none of them.

So

So that when *Everle's* Case is considered, it seems to be a good Authority to prove that in Cases of this Nature the Subject had a proper Remedy by a *Petition of Right* to the Person of the King. And if in these Cases now depending, the Parties had taken the Course to have sued by such Petition, and had been so answered, *Everle's* Case might have been properly cited as an Authority: But then, as in almost an infinite Number of other Cases, the Answer to the Petition is a Warrant for a Writ under the Great Seal; and that Writ gives a Jurisdiction to the Treasurer and Barons to act according to the Tenor of it.

The next Case insisted on, was the Abbot and Coyent of *Warden's* Case. *Ryley* 262. That Case is thus: The Petitioners pray a Remedy, *Quod ubi Rex Henricus, Pater Regis nunc, per Cartam suam eis concessisset viginti Marcas annuas pro damnis que fecit in boscis Ipsorum tempore obsidii Castri de Bedesford, de quibus viginti Marcis annuis seisti fuerunt ad totam vitam dicti Regis Henrici, & etiam tempore Regis nunc usque ad viginti annos ex nunc, &c.* The Answer is, *Veniant per Bre^o ad Scaccarium & ostendant Cartam, & ubi assignatio facta fuit ejusdem pecunie, & fiat Justicia per Thes. & Bar^o.*

Here was an Annuity granted upon a valuable Consideration by the King's Father: It had been answered during the Time of the King who granted it, and for thirteen Years during the Reign of King *Edward* himself, and yet the Payment had been stopped for twenty Years together. No other Remedy

was

was then thought of for the Grantee, but to apply by *Petition of Right* to the King: And the King's Answer is, *Let a Writ under the Great Seal go to the Treasurer and Barons; let the Charter be produced; let the Petitioner shew upon which Branch of the Revenue the Annuity is charged; and let Them do Justice.*

One might challenge any body to produce a Case in itself more like the present Cases than this of the Abbot of *Warden*, or more different in the Remedy taken by the Parties. If the same Method had been pursued in the Cases before Us, as was by that Abbot and Covent, this Case would have been a good Precedent. But here the Suitors pass by the King, and come directly to the Barons; who proceed to act without being authorized under the Great Seal, as in that Case, and command their Superior Officers, who, according to the Precedent, ought to have been authorized, together with Them, to have done their respective Parts for the Relief of the Petitioner.

The next Book that was cited was *Trin.* 9 H. 6. 12, 13. *Margery Parker's Case*; and this was an Authority upon which much Weight was laid.

The Case, as it appears in the Book, was thus.

Margery Parker brought a Writ of Annuity against the Queen, for 20*l.* which she had granted to Her for Life, to receive *de quadam summa assignata in partem dotis ipsius Regine de magna Custuma London*, by the Hands of the Collectors of the same Customs.

The Question in the Case was, if this Grant, so worded, was an Annuity, and did charge the Person of the Queen.

In the Debate of that Question it is said by *Babington*, That the Letters Patents, in that Case, were no more than an Acquittance to the Customers to discharge them of so much; and that if the Customers did not pay the Queen, She had no Action against them, but must sue for her Payment to the Barons of the Exchequer.

Cottesmore says, if that be so, then the Queen's Person must be charged, otherwise the Grantee would be without Remedy.

Rolf said, the Grantee might sue in the Exchequer for her Pension, as the Queen might.

But after all this Discourse amongst them, the Plaintiff had Judgment to recover the Annuity and the Arrears: So that no Regard was had to this supposed Remedy mentioned by *Babington*, but the Judgment was given against the Queen.

This, at most, was but a Thing dropt by *Babington*, in the Debate of the Case, and seems to be very crude and undigested: For he neither says how She was to sue, nor whether he meant more than that She was to sue by a Motion to the Court, (in which vulgar Sense sometimes the Word Suit is taken, as my Lord Ch. Just. *Treby* observed;) nor what Remedy the Barons could give Her.

It appears to be but a sudden Saying: And, perhaps, the Judges of the Common Pleas might not be so perfectly ready in the Course of Proceedings relating to the Revenue, upon the sudden Starting of the Question.

All that can be concluded of Certainty from that Case, as far as I see, is, that *Margery Parker* brought a Writ of Annuity against the Queen, and had Judgment to recover,

IV. Having insisted thus far in shewing that I have met with nothing in the Authors, who have wrote upon the Jurisdiction of the Exchequer, or in the Law Books, or in the Records, which countenance such a Power as is assumed by the Barons of the Exchequer in these Cases; I shall mention a *Fourth* Thing which confirms my Opinion, *viz.* That in the Oath of the Barons, there is nothing expressed which does relate to any such Trust lodged in them.

And, perhaps, there is not a better Measure to be taken of what is the natural and proper Business of these antient Officers, than what is compendiously and significantly expressed in the Oaths, which have with great Care and Wisdom been formed and instituted for them to take.

The Oath of the Lord Chancellor, the Oath of the Lord Treasurer, and of the Treasurer of the Exchequer, (which are both the same,) of the Keeper of the Privy Seal, of a Privy Councillor, of the Chamberlains and other Officers of the Exchequer, are as adequate Descriptions of the Duty and Business of those several Officers, as can be met with elsewhere.

The Oath of the Judges does amount to a very conclusive Account of their Duty: And the Barons of the Exchequer have a known and undisputed Jurisdiction as to all Matters contained in the Oath which they take.

They are truly to charge and discharge the People: They are upon no Consideration, nor by any Ingene to let the King's Right; nor to disturb or respite the Right of any other Persons contrary to Law; nor to put the King's Debts in Respite, where they may be levied: They are to speed the King's Business before all others: For no Gift to conceal, disturb, or let the King's Profit: To take nothing of any Person to delay or deliver the People, but to do it, as they may, without Hurt to the King: To redress what they think may turn to the Prejudice of the King, and if they cannot to discover it to him.

But this great and important Point of commanding the Treasurer, and other Officers of the Receipt to do their Duty, and to issue Money out of the Receipt of the Exchequer according to *Their* Opinions, is not mentioned in the Oath; nor such Guard, for the King's Security, set upon this transcendent Power as there is upon all the rest of their Business: And yet, if they have such a Power, it is of a higher Nature, and much greater Consequence, than all the rest of their Duty taken together.

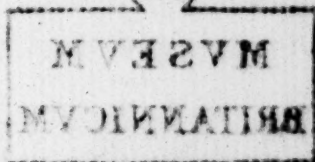
The publick Treasure is of the highest Estimation in the Consideration of the Law. Sir Edw. Coke, 11 Rep. 91. b. says, *It is the Ligament of Peace, the Sinews of War, and the Preserver of the Honour and Safety of the Realm: Consequently the Power of issuing this Treasure is of the highest Importance.*

The Lord Treasurer (whose known Business it is,) is expressly sworn truly to keep and dispend the King's Treasure; but if this Notion prevails, He must from time to time dispend that Treasure according to the Opinion

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and Directions of other Officers, who are unsworn in that Point.

V. In the *Fifth* Place I shall observe, That to suppose a Power lodged in the Barons to issue Writs requiring the Lord Treasurer, or the Treasurer of the Exchequer to do their Duty, is to suppose a direct Absurdity in the Original Institution of the Exchequer; since it is to invest the Barons, who are subordinate, with a Right of commanding their Superior Officers.

In the *Mirror* cap. 1. §. 14. it is said, *That the Business of the Barons is done under the View or Inspection of a Sovereign, who is the Treasurer of England.*

The Words of *Gervasius Tilburienfis*, speaking of the Treasurer in his Chapter of that Officer, are; *In omnibus enim & per omnia, que vel in inferiori Scaccario vel in superiori geruntur, ipsius sollicita diligentia necessaria est.* Dial. de Scac. Lib. 1. c. 5.

Upon the Constitution of a Treasurer, there goes a Writ under the Great Seal to the Barons, as well as other Officers, to be attendant upon Him, as my Lord Ch. Justice Coke sets it down. *4 Inst. 105.*

The Phrase that He uses to the Barons is, *We will and require You*; So it appears *ex parte Remem. Regis Pasch. 3 Ed. 6. Rot. 4.* where Sir Roger Cholmley brings into Court a Writing under the Seal of the Duke of Somerset, then Lord Treasurer, in that Form.

The next Officer in Order is the Treasurer of the Exchequer, who is commonly the same Person with the Treasurer of England.

These



These two Offices have gone so long together, that it is no easy Matter to distinguish what is the proper Business of the one and of the other. It seems to be the Treasurer of the Exchequer, to whom the Record, which is cited by Sir *Edward Coke*, 4 *Inst.* 105. is to be applied; because he mentions that His *Letters Patent* are recited in the Writ: For it is the Treasurer of the Exchequer who is constituted by *Letters Patent*; as the Lord Treasurer is by Delivery of the White Staff, and, as the same Sir *Edward Coke* says, in former Times by Delivery of the Keys of the Treasury. 4 *Inst.* 104.

Mich. 14 *Eliz.* Rot. 355. *ex parte Remem. Reg.* The Queen sends her Writ to the Barons, informing them that She had constituted Sir *William Cecill*, Lord *Burleigh*, Treasurer of the Exchequer, and commands them to be attending upon Him, *prout decet*.

I might add, if it were necessary in a Matter so very plain, that His Superiority appears in all the Writs directed to them, in all which He is first named.

The next Officer, in point of Order, is the Chancellor of the Exchequer.

After Him are the Chamberlains. Which was antiently an Office of very high Dignity, and trusted to Persons of the highest Quality in the Kingdom: But the Office being such as might be executed by Deputies, the Chamberlains by Degrees made themselves useless, by leaving all the Business to their Deputies; the Consequence of which was, the Office it self sunk by Degrees to little more than a Name. This might be easily shewn, if it were not to digress; but that they are named

before the Barons in divers Writs and Acts of Parliament is certain.

The Act of 26 H. 8. c. 3. which gives the first Fruits to the Crown, observes that Order throughout, *Treasurer, Chancellor, Chamberlains and Barons.*

I could mention many other Acts and Authorities. But I am sensible it is but an ungrateful Subject to be lessening the Rank of Officers, who preside in one of the Great Courts of *Westminster*, and at the same Time that this is not very necessary; since it will be granted that the Treasurer of *England*, and the Treasurer of the Exchequer are certainly Superior to the Barons; which is enough for me to found my self upon, in saying that it carries a very great Absurdity, that Superior Officers, in the proper Business of their Office, should be under the Command of other Officers of the same Court, who are acknowledged to be inferiour to Them.

It must be confessed to be true, as my Ld. Ch. Justice observed, that if my Lord Ch. Baron has a Suit in the Court of Exchequer, He must submit to the Judgment of the Barons: And I readily own the Treasurer himself, and every body else who comes into that Court as a Suitor, must submit to the Judgment of the Court; for as a Suitor he can be considered no otherwise than any other private Person, and is not acting in his Office. But then it must be granted, that all the other Barons together have no Power of commanding the Ch. Baron as such; and consequently nothing can be inferred from thence to take away the Absurdity which must ensue in supposing that the Barons of
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the Exchequer, who in the Order of the Exchequer are placed below Him, can command the Treasurer to do his Duty, and issue out the King's Money according to their Judgments.

It has been said upon this Occasion that it is not the Barons, but the King's Writ, which the Treasurer must obey. And it is most true, when the King's Pleasure comes signified to Him under the Great or Privy Seal, He must obey it; because these are the fixed Methods whereby the King's Pleasure is to be known for the Issuing of Money: But that is no Answer to the Impropriety of His being commanded to act by Writ, which comes to Him under the Teste of his Subordinate Officers only; nor a Proof that such Writ is an Authority for Him to act by, much less an Obligation upon Him to act according to the Tenor of it.

I will only add, to shew the Absurdity of the Notion that the Barons can command the Treasurer by their Judgment, that even that Judgment of theirs is put under the Correction of the Treasurer; for the Law has made the Lord Chancellor and Treasurer the Judges, who are to determine whether the Judgments of the Barons be erroneous, or not. Can any Thing be more incongruous than to say, the Barons by their Judgment can require the Treasurer to do a Thing, and the Treasurer can review that Judgment, and determine whether it be fit for Him to do it, or not?

It was said futher, that the Treasurer of the Exchequer is inferiour to the Court held before the Barons, and that He is only ministerial

nisterial as to Common Pleas. All that I shall say to this Assertion is, that it was only said, and not proved; and therefore, till I shall hear upon what Reason the Assertion is founded, I will consider it no further.

VI. The *Sixth* Thing which I shall mention is, that the Exchequer, if it be considered as it comprehends the whole Business of the Revenue, as well relating to the *Exitus* as the *Introitus*, may be taken as one entire Body, of which the Treasurer is the Head, and all the Subordinate Officers are Parts and Members; and in this Extent and Latitude it is treated of by *Gervasius Tilburienfis*: But if it be considered in its several Parts, as to what is intrusted distinctly to the Treasurer, and Chamberlains, and what is put under the Direction and Government of the Barons, it comprehends distinct Courts, and such as have no proper Communication one with another; tho' perhaps, as to some Things the Treasurer, Chamberlains and Barons, are intrusted jointly; as my Lord Ch. Justice Coke, 4 *Inst.* 105. says they are with the Custody of the Judicial Records.

That the *Receipt of the Exchequer* is a Court, and wholly under the Treasurer, appears by the Oaths of the Officers belonging to it.

Particularly in the *Black Book* the Oath of the Writer of the Tallies is, *truly to write all the Tallies, and Counter-tallies of all Payments and Assignments in the Court of Receipt; and to give Attendance and Dispatch, according to the antient Custom of that Court.*

Officers of the Receipt are sworn to be faithful and true to the Lord Treasurer; as appears by the Oath of the Lord Treasurer's Clerk, or Auditor of the Receipt. *Book of Oaths, 20, 21.*

The Under-Treasurer is sworn to serve the King in the Exchequer, and in the Receipt of the same; and to survey and order the Receipts of all Sums of Money paid to the King's Use in the said Receipt, and the Issue of the same. *Book of Oaths, 212.*

The Chamberlains are to enter and ingross the Receipts of all Monies received to the King's Use at the Receipt, as also the Payments of the same; and not to assent to the Deliverance of any of the King's Money in the Treasury, without sufficient Warrant. *Book of Oaths, 219.*

If any Orders are fit to be abolished or altered in the Receipt, or any new Orders to be made, it is to be done by the Lord Treasurer; and usually with the Concurrence of the Chancellor and Under-Treasurer: but the Barons are not consulted, or consenting. This appears in the *Black Book, fol. 76. 13 Eliz.*

If the King thinks fit to command by Privy Seal, which has been often done, that any new Order or Method should be observed in any Part of the Receipts, it is usually directed only to the Treasurer and the Chancellor and Under-Treasurer. And if it be thought proper that it should be published and inrolled in the Court of Exchequer, to the End that all Officers and Accountants might the better take Notice of it, the Lord Treasurer and Chancellor and Under-Treasurer come into the Court of Exchequer, and the Treasurer commands it
to

to be published and inrolled, together with his own Assent to it, and the Assent of the Chancellor and Under-Treasurer; but no Notice is taken of the Barons, tho' present, in any Part of the Business.

The whole Form of this is particularly mentioned in the *Black Book*, fo. 82. 39 *Eliz.* when the Lord *Burleigh* was Treasurer.

Add to this, that according to the Constitution of the Exchequer, the Barons are not at all privy to the State of the Treasure in the Receipt, nor by Law ought to be made privy; so that all they act must be merely as Suitors apply to them, without any Knowledge of what there is in the Receipt to answer the Writ, or of the publick Occasions of the State, from which it may be fatal to divert the Money in the King's Coffers.

VII. *Seventhly*, This Method of Proceeding does directly break through several received Notions, which have been looked upon, in all Ages, as Maxims and Rules of Law.

As *First*, That no Part of the King's Treasure could be issued but by Warrant under the Great or Privy Seal; for which Reason it is, that the Law has put such Guard upon these Seals, that the Counterfeiting them is High Treason.

Gervase of Tilbury, says in direct Terms, *Dial. de Scacc. Lib. 1. c. 6. Thesaurarius & Camerarii nisi Regis expresso mandato, vel Præsidentis Justiciarii, susceptam pecuniam non expendant: oportet enim ut habeant Auctoritatem rescripti Regis de distributa pecunia.* The *Præsident Justiciarius* was the *Custos Regni*; that Great Officer was
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sometimes called by that Name, and sometimes by other Names. And lest there should be a Mistake of what is said of the *President Justiciary*, he is careful to set the Matter right by adding, that what was said as to Him is only to be understood *de Brevibus Præsidentis Justiciarii cum Rex absens sit, Et cum sigilli ejus Impressione Jura Regni statuuntur.* ibid.

I will not trouble myself to cite Authorities to prove so known a Position, as that no Money can be issued out of the Receipt but by Warrant of the Great, or Privy Seal. I will only mention what was said by my Lord Chief Justice *Coke*, in his Report of Sir *Walter Mildmay's* Case, in the Earl of *Devonshire's* Case: And I choose to mention it, because the Reporter was cotemporary to the Judgment given in the Case of *Wroth*, if not in that of *Neville*; and that his Book was published several Years after those Judgments were given.

Sir *Edward Coke* says, 11 Rep. 91. b. *That it was resolved in that Case, That no Officer of the King, nor all of them together, can issue out or dispose of the King's Treasure ex officio, tho' it be for his Honour or Profit, unless by a Warrant from Himself.* These Words are as apposite to the present Occasion as if they had been framed on Purpose to destroy such a Notion as is contended for in the Cases before us.

The Law has intrusted the King Himself only with His Treasure, when once it comes into his Coffers, which is the Receipt; and only He, or such as are empowered by his Warrant, can dispose of it: No Court has any thing to do with it.

This

This Case of Sir *Walter Mildmay* was adjudged, *Mich.* 37. and 38. *Eliz.* after the two Cases of *Neville* and *Wroth*; but not so long after as that it could be possible either of those Cases should be forgotten: And therefore, the Barons, who had Sir *Walter Mildmay's* Case before them, could not but know it, if the Point, now in Question, of the Authority of the Seal of the Exchequer, had been settled in those Cases of *Wroth* and *Neville*; or if in the Debate of those Cases it was taken to be known Law, and the Course of the Exchequer. According to Sir *Edw. Coke's* Report, the Question was directly before them, *What Seals of the King might be a sufficient Warrant to issue out the King's Treasure.* One would think upon such a Question they should not have forgot the Seal of the Exchequer, which, as it seems now to be insisted on, is not only a sufficient Warrant, but a better and higher Authority than any other, and such as can enforce the Issuing of the King's Treasure, when the Great Seal itself fails. Yet there is not the least Notice taken of the Exchequer Seal in the Book. It is laid down there first *negatively*, that every Warrant of the King's is not sufficient: As for Instance; His Warrant by Word of Mouth is not; His Warrant under the Signet is not; and yet, as it is observed there, in some Cases the Law takes Notice of the Signet: Then *affirmatively* the Book says in express Words, *The Warrant which is sufficient in Law to issue the Treasure of the King, ought to be under the Great or Privy Seal.* 11 Co. 92. a.

To evade the Force of this Argument, it has been suggested as if what was found in the

the Law Books, to the effect which I have mentioned, was to be understood only of the common and ordinary Methods of issuing the King's Treasure.

The Truth is, if the Method now insisted on was a legal Method, one would wonder it should not have been a very usual and ordinary one, since it is so very easy and ready for the Subject.

I think it might be a sufficient Answer to this Suggestion to say, that it is an Evasion to serve a Purpose only, and has no Proof or Foundation for it to be found in the Books.

But if the Case, which was then before the Court, be considered, there will appear to be no Pretence for such a Surmise. For the Question there was, Whether a Warrant under the Hands of the Treasurer, and Under-Treasurer of the Exchequer, directed to the four Tellers, for the Payment of 100*l.* *per Annum* to the Chancellor of the Exchequer for his extraordinary and necessary Services, was good in Law: Payments having been made according to such a Warrant, and the Money being demanded back again of the Executors of the Chancellor of the Exchequer.

Nothing could have been more natural than to have taken Notice, upon such an Occasion as this, that tho' the Treasurer and Under-Treasurer could not by their Warrant empower any Payment out of the Receipt, yet the Barons by their Judgment, and by issuing thereupon a Writ under the Exchequer Seal could do it. And if the Barons, on so fair an Opportunity, had omitted to assert this Power, yet it is very un-

likely that Sir *Edw. Coke* (who in his Reports does not confine himself to the Case before the Court, but does generally lay together all the Learning in the Law which comes under that Title, so as to make them in the Nature of common Places,) should omit to take Notice of it: And 'tis yet more unlikely, that He should again make the same Omission in his *fourth Institutes*; where he particularly treats of the Jurisdiction of the Exchequer, and where it was not only proper but necessary to take Notice of it, if he did not intend to leave his Work imperfect.

There was another Thing said by way of Answer to this Objection: That, in the Case now depending, the Judgment of the Barons was not properly an Issuing of the King's Revenue, but that the Revenue was issued by Virtue of the Great Seal, and the Authority of the Letters Patent: So that what the Court did was but a Determining of the Right, a Judgment that the Letters Patent were legal, and did bind the Successor; and therefore the Barons command that the Revenue be issued out according to the Letters Patent.

If it be so, that the Letters Patent, and not the Judgment of the Court, are the Warrant for issuing the Money in this Case, then the Authority of the Barons, as to the issuing of Money out of the Receipt, is given up.

But what then becomes of the Authority of those Cases of *Neville* and *Wroth*? What was the Warrant upon which the Money was issued there? For in neither of those Cases was there a Warrant of the Great or Privy Seal. And therefore, either those Judgments must be founded upon some particular

Reason proper to those Cases; and consequently those Cases are not to be applied as Precedents for warranting the Judgments now in Question: Or else they prove a direct Power in the Barons of commanding the Treasure out of the Receipt, by no other Warrant but the Exchequer Seal.

If this Answer be considered the other way, and it be taken, that the Great Seal is to be the Warrant to the Commissioners of the Treasury, in this Case, for issuing the Money, and not the Judgment, or the Exchequer Seal, what does this whole Proceeding signify? What is done by this Judgment? And what is to be done by the Writ that is to issue upon it?

The Authority of the Great Seal for the issuing Money was the same before the Judgment as it continues after: The Judgment is drawn up in the Words of the Letters Patent; and what was said before under the Great Seal, is now said again under the Seal of the Exchequer; a Seal much less considered in the Law: And if after all it be admitted, that the Money, if issued, must be by Warrant of the Great Seal, the Consequence then must be, that after all these Proceedings the Thing is but just where it began.

If it be understood, that this Writ is no more than a Certificate to the Lords of the Treasury of the Barons Opinion, that the Letters Patent are good in Law, and continue in Force in the Time of the Successor, it is perhaps what the Barons might properly do: Especially, if the Question had come judicially before them in any Suit depending;

or, according as the antient Course was, if a Direction had gone under the Great Seal to the Treasurer and Them, to have looked into the Letters Patent, and considered of their Validity. But then, it is but a Certificate: It is not a Judgment upon which a Writ of Error will lye; and We are all in a Mistake, while We are debating here as if a proper Judgment was regularly brought before Us.

Therefore, I take it for granted, this was said only to make the Thing a little more plausible. It looked not only new, but harsh, I will not say absurd, to affirm directly, that if the Barons issued out a Writ under the Exchequer Seal, commanding the Lord Treasurer to pay a Sum out of the Receipt, He must obey it; and therefore the Letters Patent were mentioned. But I think it is plain, unless a Writ under the Seal of the Exchequer be a good Warrant and Discharge to the Treasurer and Chamberlains in Point of Law if it be obeyed, and be compulsory upon Them to obey it, the whole Proceedings in this Case are ineffectual, and carry Things no farther than just where they were when the Suits began.

Secondly, The Judgments given by the Barons in these Cases, are not consistent with another known Maxim; That when once Money is paid into the Receipt of the Exchequer, no Court has any Power over it, nor is there any legal Method to fetch it back again; altho', in several Cases, if it had not been actually paid into the Receipt, it might have been restored to the Party.

To this Purpose nothing can be more strong than the common Cases of Reversals

of Outlawries and Judgments; where, tho' by the Judgment of Reversal, the Party is to be restored to all that he has lost, yet whatever has been actually brought into the Receipt of the Exchequer is gone past Redemption: And yet when the Outlawry, or Judgment is reversed, it is to all Purposes as if it had never been. And these are Cases of Restitution which are most favoured in Law, and the Relief extended as far as possible.

In like Manner, when upon an Office or Inquisition a Title is found for the King, and the mesn Profits are paid into the Receipt, if upon a *Traverse*, or *Monstrance de Droit*, Judgment be afterwards given for the Subject, and an *Amoveas Manus* awarded, yet as to Profits paid into the Receipt there shall be no Restitution.

This is so known, that in Cases before the Barons, where there is a Question touching the Profits of an Estate whereof the Title is found for the King, if They conceive a Doubt upon a Suggestion of a Subject's Right, which may hereafter appear, They will in Discretion direct the Money to remain in the Chamberlains Hands for a Time, and not to be paid immediately into the Receipt; because when it is once there it is out of their Power, and cannot be brought back again.

It cannot be but that in these Cases the Law is so. But my Lord Ch. Justice endeavoured to assign several Reasons, which might distinguish these from other Cases. He said, that Judgments and Outlawries are reversed in the King's Bench, and that the King's Bench cannot send a Writ to the Treasurer and Chamberlains requiring Them to pay Money

Money out of the Receipt; 'tis only the Barons can do it: Nor can the Barons do it in those Cases, because the Record of the Judgment is in the King's Bench, and there is only a Transcript in the Exchequer, upon which they cannot send a Writ.

I can easily agree, that the King's Bench cannot send a Writ to the Treasurer and Chamberlains to command Money out of the Receipt of the Exchequer; and I think I have proved there is no such Power in the Barons: But if the Barons have such a Power in any Case, I am inclin'd to think it would be no good Reason why they might not exercise it in these Cases, that they have not the Record itself, but only the Transcript of the Record; because the Procefs of the Exchequer issues every Day upon *Estreets*, which are Transcripts, or indeed Extracts of Records only.

As to the other Cases, of Money levied upon Offices or *Inquisitions* found, my Lord Ch. Justice observed, that there was a Difference between a Judgment upon a *Petition of Right*, and a Judgment upon a *Traverse*, or a *Monstrance de Droit*. That in the first Case, the Judgment was general, *that the King's Hands should be amoved, and the Party restored to the Possession*: But in the other Case the Judgment was, *that the Party should be restored una cum exitibus & proficuis inde medio tempore perceptis*: And so He compared a Judgment on a *Petition of Right* to a real Action at Common Law against a Subject, in which there were no Damages; and a Judgment on a *Monstrance de Droit* to a possessory Action, in which Damages were recover'd at Common Law.

To

To this I answer, that the Cases of Subjects are not to be compared to the Case of the King; and that at the Common Law, before the Statute of *Articuli super Chartas*, the Subject, in no Case of an *Amoveas Manum*, could have any Judgment for restoring *Issues*, however false *the Office* appeared, as Sir Edward Coke expressly affirms: But be that as it may, yet this Distinction makes nothing to the present Question. For in Cases of *Monstrance de Droit* or *Traverses*, where the Judgment is to restore the Party to the *mesn* Profits, it is generally expressed *unde dicto Domino Regi nondum est responsum*; and where these Words are omitted the same are understood. If the Profits remain in the Tenants Hands, or if they are *in transitu* in the Hands of the Receivers, tho' the Receivers have accounted for them, the Party is restored to them; but if they are answered into the Receipt they are lost to Him. This is affirmed by my Lord Ch. Justice Coke, in his ² Inst. Commentary upon the Statute of *Articuli* 572, 573. *super Chartas*, c. 19. which Act was made 28 Ed. 1, and the Statute *de Escheatoribus*, which was made the Year following. And yet the Words of the Statute are very full, that upon an *Ouster le main*, because there was no Cause to seize, *soient les issues pleinement rendus a celui a que la Terre demurt, & ayera le Damage rescève*.

It is not a very difficult Matter to find out a seeming Reason to support a Conclusion one is determined to make; but it is lost Time to dispute of the Strength of such Arguments, where it is easy to come to as much

much Certainty as is consistent with the Nature of the Thing.

There are many of these Judgments upon *Traverses*, and *Monstrance de Droit* to be found upon Record, where the Party is to be restored to the Possession, *unatum exitibus & proficiis inde medio tempore receptis*: If it could be made appear, that upon any such Judgment Money was paid back out of the Receipt of the Exchequer, or if any Writ could be produced, requiring the Treasurer and Chamberlains to make Restitution, it would be to me a much more cogent Argument, than any new plausible Reason which may be assigned; but of this there is no Footstep in any antient or modern Book: If it never was done, the old known Reason will best serve our turn, that it was because the Money was paid into the Receipt, and then no Court had Power to intermeddle with it.

VIII. *Eighthly*, This does seem to be an extraordinary and anomalous Method of Proceeding, and such as has nothing like it in any other Court, either when the Subject sues the King, or any other Subject.

This Method of Proceeding takes from the King all Possibility of making a Defence: For the Attorney General does not come in till the Barons have commanded the Letters Patent to be enrolled; after which the Attorney General could not plead *non concessit*, as he might have done before; or if he could have pleaded that Plea, no *Venue* is laid, and consequently no Trial could be had on such Issue. And a proper Defence being thus taken away, or, which is all one, the Trial
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of it rendered impracticable, no Courſe of any Court can make ſuch a Proceeding good.

It was confeſſed, that the Legitimation of a Caſe is to be ſuſpected unleſs there be another like it.

But it was ſaid, that in other Courts Caſes might be found, which might properly be reſembled to the Proceeding in this Caſe; and the Caſe in *Co. Ent.* 93. was inſtanced in. I will put that Caſe as it ſtands upon the Record.

A Claim is put in by the Lord *Hunſdon*, to a Sum of 18 *l.* 11 *s.* 8 *d.* which is charged upon the Accounts of the ſeveral Sheriffs of *Kent* and *Dorſet* for the laſt Year, for Iſſues out of the Common Pleas, and King's Bench; and for Fines and Amerciaments before the Juſtices of *Aſſize*; and for Iſſues and Amerciaments before the Barons of the Exchequer, &c; (the Particulars are expreſſed in the Claim;) which were ſeverally ſet upon his Tenants, or Reſiants within his Manor and Hundred of *Sevenoakes*, and *Coddeſbeath*: All which He claims to belong to Him, the Perſons, upon whom they were ſeverally ſet, being Tenants, or Reſiants within his Manor and Hundred, as the ſaid Sheriff of *Kent* had teſtified upon his Account.

And He ſets out Letters Patent of *Ed. 4.* granting to the Archbiſhop of *Canterbury*, and his Succeſſors, the Return of Writs, and all Fines and Amerciaments of Tenants and Reſiants within the Manor, &c: and ſo proceeds to ſhew a Title in the Archbiſhop to the Fines, &c. with which the Sheriff was charged: And then ſhews the Inrollment of theſe Letters Patent in the Exchequer, in the third Year

of *Edw. 4*; and that *Cranmer* was seized, in Right of his Archbishoprick, of the said Manor, Hundred and Liberties, &c.

Then He sets forth the Act for erecting the Court of Augmentations, whereby all Manors, &c. which *H. 8.* should purchase, were put under the Government of that Court: After which Act, *Cranmer* by Deed inrolled conveyed the Manor and Liberties to *H. 8.* and his Heirs; which Grant was confirmed by the Prior and Covent of *Canterbury*. And then He sets forth the Act of 32 *H. 8. c. 20.* for reviving and continuing Liberties and Privileges in the Hands of the King; by Virtue whereof, *H. 8.* was seized, and died seized: and so conveys a Title to *Ed. 6.* and Queen *Mary*: And that upon her Death Queen *Elizabeth* became seized; and that she granted the Manor, Hundred, and Liberties to Him and his Heirs Males; and that He entered and was seized. He then proceeds to plead an Allowance in the Exchequer of these Fines and Amerciaments to the Archbishop of *Canterbury*, in the Time of *Ed. 4*: And so makes his Claim; which the Attorney General confesses.

And thereupon, on View of several Records, and for that the Sheriff of *Kent*, upon Oath, did testify the Matter of Fact, that the several Persons, on whom the Fines and Amerciaments were set, were Tenants and Residents in the Manor and Hundred of the Lord *Hunsdon*, the Barons adjudge, that the Sheriff of *Kent* should be discharged of 10 l. 6 s. 4 d. with which he stood charged upon his Account; and that the same be allowed to the Lord *Hunsdon*; and thereupon the Sheriff had his *Quietus*. Upon

Upon this Case I observe.

1st, That it has no Relation to any Money in the Receipt of the Exchequer.

2^{dly}, This is a Proceeding in Discharge of the Sheriff upon his Account: The Question being only, if the Sheriff should be charged with so much as payable to the King, contrary to what he had testified upon his Account on Oath. So that this Question was the proper Business of the Barons to determine.

3^{dly}, This Claim of the Lord *Hunsdon's* was by way of Defence to a Demand on the King's Part, and not by way of Suit of the Subject to recover from the King: And this Demand, on the King's Part, is so far from being founded on the Record, that it is contrary to what the Sheriff had sworn upon his Account.

4^{thly}, This was not a Claim which came at that Time originally before the Court; but was founded upon antient Allowances, before made in the Court of Exchequer.

5^{thly}, Here was no positive Record for the King; it being only a general Charge upon the Sheriff, and he having discharged himself by Oath.

6^{thly}, This is a Case directly within the Statute 5 R. 2. which impowers the Barons to allow the Matter pleaded by way of Discharge upon Account.

By all which it appears, that there is no manner of Resemblance in that Claim of my Lord *Hunsdon*, to the Cases before the Court; where the Subject comes originally as Plaintiff

Plaintiff, and makes a Demand of Money out of the Receipt of the Exchequer.

Another Case, cited by my Lord Chief Justice, as a Proceeding that might be resembled to the Cases now before the Court, was that of the Lady *Broughton*; which is entered *Trin. 24 Car. 2. Rot. 38. B. R.*

There an Information was exhibited against the Lady *Broughton*, for divers Misdemeanors committed by Her, as Keeper of the *Gatehouse Prison* at *Westminster*. Upon Not guilty pleaded a Verdict was found against Her; and Judgment was given, that She should be fined 100 Marks, *Et quod Officium Custodis Prisone prædictæ capiatur in Manus Domini Regis, quousque Curie hic constiterit cui vel quibus Officium illud de Jure spectat, vel quousque Curia hic ulterius ordina-verit, salvo Jure cujuscunque, &c.*

Whereupon the Dean and Chapter of *Westminster* come in, and set forth their Title to be a Corporation; and that King *James I.* granted to them and their Successors, *habere Prisonam & Arrestacon' & Imprisonament' omnium Hominum arrestat' infra Civitat' & Libertat' Westm' adeo libere quiete & integre ac in tam amplis modo & forma prout ultimus Abbas, &c. in præmissis habuit*, To hold to them and their Successors to their Use for ever, &c. By Virtue whereof they were seized *de Libertatibus habendi Prison' & Arrestacon' & Imprisonamentum omnium Hominum infra Civitat' & Libertat' Westm', ut de feodo & Jure, in Jure Ecclesia, &c.*

And then They set forth the Grant by them to Sir *Edward Broughton* and *Mary* his Wife, of
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the Office *Custod' Prisone sue predict'*, *simulcum omnibus feodis, &c. Habend'* to them, their Executors and Assigns, for forty Years; by Virtue of which they were possessed, &c: And that Sir *Edward* died: And that *Mary*, as Survivor, was possessed; and for divers Offences, by her committed in the Execution of the said Office, (whereof she was convicted,) forfeited the said Office, *prout* the Record.

Et ea de Causa predict' Dec' & Capital' petunt & calumniant Libertat' habendi & disponendi Officium predict', &c. Et petunt allocationem Libertat' predict', secund' concessionem sic ut prefertur factam; and make the the proper Averments. The Attorney General confesses their Claim, and thereupon they have Judgment.

I acknowledge that I am much to seek as to any thing appearing in this Record, which is in the least to be resembled to the Cases before us.

Judgment was given against the Keeper of a Prison, of Forfeiture of the Office for a Misdemeanour: By that Judgment the Office was Vacant; but it did not appear to the Court in whom the Right was of disposing, or exercising the Office. Upon such an Avoidance, it was necessary for the sake of Publick Justice, and to prevent the Escape of the Prisoners, that the Office should be taken into the King's Hands, till it might appear to the Court in whom the Right was; but it was only *quousque*, and with a *salvo Jure*. So that no Title to the Office is found, or so much as alledged for the King: And when the Dean and Chapter, in Pursuance of the very Direction of the Judgment, come in, and set out their

their Title, the Attorney General confesses it, and they are put into Possession.

I do not see but, notwithstanding either of these two Instances, the Cases before Us stand by themselves; and that the Argument against these kind of Proceedings does still remain in Force, because they are unusual, and of an unprecedented Nature, and such as the Council can scarce find a Name for.

In their Arguments upon these Cases some of the Council said, that the Proceeding was in the Nature of a *Monstrance de Droit*.

Others, with more Circumlocution, stiled it, *an Application to the Court of Exchequer, setting forth a Right to Part of a Revenue in Charge before them, which the Officers under their Power refuse to pay.*

Others said it was neither a *Petition*, nor a *Monstrance de Droit*; for those were only proper when the Suit is in Disaffirmance of the King's Title, but here the Subject claims from the King, and complains only of the Officer; but they gave it no Name.

My Lord Ch. Justice was pleased to say that this Suit was a *Monstrance de Droit*; and, I think, I may affirm that to be the first Time it had a certain Name. *Plowden* calls Sir H. Neville's Case, a Report of a Judgment given by the Barons, upon the Exhibiting to the Court of Exchequer, by Sir H. Neville, a Deed of Grant of the Office of Keeper.

My Lord Ch. Justice said, that a *Monstrance de Droit* was a Common Law Remedy. He owned, that tho' several Statutes had enlarged the Relief, which the Subject might have in many Cases where there was Occasion to interplead with the Crown; yet the Cases

in at least in some degree
see acc. Lord Nottingham
-ham's Mss. Rep. in Rich-
mond Park Case n.º 82.

Cases in Question did not come within the Relief of any of those Statutes, but remained the same as at Common Law. But He said, this Suit was a *Monstrance de Droit* maintainable at Common Law, and was the Subject's proper Remedy when his Title appeared upon Record. And that the Party might in this Case maintain his *Monstrance de Droit*, and was not put to his *Petition of Right* to admit himself out of Possession.

1st, Because the Right He claimed is not grounded on a *Matter of Fact*, but by *Matter of Record*; *Williamson* claiming by a Deed inrolled, and that Inrollment directed by the Letters Patent, which is a *Matter of Record*.

2^{dly}, Because the Party does not go about to destroy the King's Title, but his Claim subsists upon the King's Title to the Excise.

3^{dly}, Because his Annuity is not turned to a Right, nor divested; and therefore it was not necessary he should go by way of *Petition*.

I will not, at this Time, enter into the particular Consideration of those Reasons. Tho' I cannot but say, in the *First* Place, it is far from being clear to me, when Letters Patent direct, that the Assignment of one Subject to another should be inrolled within thirty Days before the Auditor of the Receipt, or Clerk of the Pells, for a particular Purpose, (*viz.* That it may appear what Assignments have been granted,) that such an Inrollment does make a Record; much less such a Record as is equal to that Record which intitles the King. And if it be not a Record of as high a Nature, the Subject is put to his *Petition*, and in no Case can have a

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Monstrance

Monstrance de Droit: As is resolved in *Piers Partifield's Case*, 29 aff. 31: and is agreed, and declared to be Law in the *Commonalty of Sadlers Case*. 4 Co. 55. b. and 56. a.

In the *Second Place*, I cannot understand, but that a Person, who sets up a Title to the Inheritance of a Part of the Excise, and seeks to recover it from the King, does go about to defeat the King's Title to that Part of the Revenue.

Nor will I, in the *Third Place*, enter into the Debate, whether, as this Case is, the Annuity be devested or turned to a Right. Tho' I cannot but observe, that a Writ of Annuity, (and this Suit is in the Nature of such a Writ,) is the highest Writ which such a Person can pursue; and the Judgment given upon that Writ is for the whole Inheritance, for the time to come, as well as for the Arrears: And therefore it might seem, that he who brings it doth admit himself to be devested of the Whole.

But I will very plainly own, that after Consideration of this Argument, with the best Application I could use, several Doubts remain with me as to the Force of it.

As, 1st, Whether a *Monstrance de Droit*, in the Sense it is now taken, and commonly understood, and as it seems to be applied to these Cases, did lie at the Common Law.

2^{dly}, If that were to be admitted, because I would not dispute about Words or Names, yet I am not satisfied that this Suit can properly be called a *Monstrance de Droit*.

3^{dly}, Let this Suit have what Name it will, yet I think it is not the proper Common Law Remedy, to which the Subject

was entitled in a Case of this Nature; but that the Party was put to his *Petition of Right*.

3 I. The *First* Thing I shall do, is to shew why it seems doubtful to me, whether such a Suit as a *Monstrance de Droit*, as it is now understood, did lie at the Common Law.

I will not be thought to mean, that the Subject had not, in several Cases, a proper Way of defending himself at Common Law against the King, and by proper Application to the Courts to obtain an *Ouster le maine*. But I do say, wherever the King had a direct Title of Freehold, or Inheritance, appearing for him by *Matter of Record*; (whether that *Record* was Judicial, or Ministerial; or was a Conveyance of *Record*; or was a Matter of Fact found by *Office of Record*;) the Subject at Common Law was put to his *Petition of Right*, and could not interplead with the King, either by traversing the King's Title, or avoiding it by setting up any Title of his own: And in this I say no more than what was agreed in the *Commonalty of Sadlers Case*. 4 Co. 55. a.

'Tis very true, if the Office did not entitle 4 Co. 56. the King to the Possession, but only to the ^{a, b.} Bringing of a *Scire Facias*; (as if a *Cessavit per Biennium*, or a *Fine by Collusion*, or the committing of *Waste*, was found against the King's Tenant by Inquisition;) upon a *Scire Facias* brought, the Party at Common Law might come in and defend the Possession, by shewing his Title, and denying the Matter found against him. For it was what the Writ itself expressly required; and it would have been very absurd to say He should not be ad-

mitted to do that which the very Writ required him to do: And by the *Scire Facias* He was made privy, and had a Day to plead. *Kelw. 155. b. 158. a, b.*

And therefore such a *Traverse*, or, if that Name be better liked, such a *Monstrance de Droit*, lay at Common Law.

4 Co. 55.
a.

In like Manner, where the Office contained the whole special Matter; so that tho' there might be such Matter found, as, if it stood alone, would make a Title for the King; yet, if there was also found, in the same Office, sufficient upon the Whole to shew a good Title in the Subject, the Subject might insist upon this Matter, and might pray an *Amoveas Manum*: Because in Truth the very Record, upon which the King seized, made a Title for the Party.

4 Co. 55.
a.

As suppose it to be found, that *A* did disseize me of Lands holden of the King, and that *A*. aliened in Mortmain, or died without Heir; in this Case, I may pray an *Ouster le Main* upon the very Record. So, if it be found that the King's Tenant, at the Time of his Death, held an Acre of Land of me by Lease for his Life. *Kelw. 156. b. 157. a. 158. a.*

In like Manner, if the Title found for the King appears, by the Record, to be determinable upon Performance of a Condition, and that Condition appears, upon the Record, to be performed, the Party might take Advantage of it. 4 Co. 55. a, b.

But as the Common Law stood, wherever a Title for the King only was found by *Matter of Record*, tho' it was false, the Party could not traverse it. So where a Title was found

found for the King which was true, but it was disclosed in the Record, that the Subject had a good Right, which would avoid the Title found for the King; yet in that Case the Subject could not have been admitted to shew it, but was so far concluded as to be put to his *Petition of Right*. 4 Co. 56. a.

I need not mention *Bracton's* Words for this Purpose.

Lib. 1.
c. 8. &c
Lib. 4.
c. 10.

Stamford's Opinion is expressly, that a *Monstrance de Droit* was given by the Statute 36 Ed. 3, and did not lie at Common Law. *Prer. Reg. cap. 21. fol. 71.*

And in the Case of the Corporation of *Sadlers*, which has been mentioned before, as it is reported by my Lord Ch. Justice *Anderson*, 1 And. 180, 181. num. 216. it is expressly affirmed, that the *Traverse* and *Monstrance de Droit* are both given by that Statute. Nor do I see, that any thing to the contrary of what I have said is affirmed in the Report of this Case, by my Lord Ch. Justice *Coke*. Unless it be, that He gives the Name of a *Monstrance de Droit* to those Proceedings, which were always admitted to have been at the Common Law; that is, where the special Matter was so found, as that, upon the same Record, it did appear, that the Right was in the Party, and not in the King: Whereas, in proper Speaking, it is not the Subject there who comes in and shews his Right, but the King's own Record shews it.

But I think it very plain, that the Statute 36 Ed. 3. cap. 13. which gives a *Traverse* in Case of *Offices* found, does also give the *Monstrance de Droit*: Which my Lord Ch. Justice *Coke* himself, in the *Commonalty of Sadlers*

Sadlers Case, does agree was not given by the Statute 34 *Ed. 3. cap. 14.* For tho' that Statute gave the Subject a *Traverse* in some Cases, where the Office was found by Virtue of a Writ, or Commission; yet it was defective, even in those Cases: For upon the *Traverse* taken, tho' the Issue was found for the Subject, yet no Judgment could be given without a new Commission *de procedendo ad Judicium.* 4 *Co. 56, 57.*

The Words of the Stat. 36 *Ed. 3.* are, *That if any one will put in a Claim to Lands seized by Office, the Escheator is to send the Inquest into Chancery, and a Writ is to be delivered to him to certifie the Cause of the Seizin there.* And there the Party soit oye sans delaye de traverser l'Office, ou autrement monstrier son Droit, Et il lonques maunde devant le Roy, a faire final discussion sans autre Maundement.

These Words, as I take it, gave the Name of *Monstrance de Droit* to that sort of Proceeding; and I think I may affirm, with *Stamford*, that no Book before this Statute did treat any thing of a *Monstrance de Droit.* *Stamf. c. 21. Prer. Regis.*

That it was this Statute which gave the Subject a Right of interpleading with the King, where an absolute Title was found for the King by Office; and that the Subject is still put to his Petition in all Cases out of the Remedy of that Statute, (as in all Cases where the King is entitled by a Judicial Record;) is what appears plainly by the Lord *Hungerford's Case*, which is 4 *Ed. 4. 21, 22.* and also by 9 *Ed. 4. 52.* and 13 *Ed. 4. 8.* and by many other Cases: I need not be at the Trouble of citing them all.

II. But in the *Second Place*, suppose it should be admitted, that a *Monstrance de Droit* did lie at Common Law, yet still it remains a Doubt to me, how the Proceeding in this Case can be called by that Name.

In Cases where an *Office* is found by which the King is entitled to the Possession, by the Stat. 36 Ed. 3. (and take it for granted at Present, in some Cases at Common Law,) the Subject may come in and interplead with the King; either by denying the Title found for the King, or by shewing his own Right, whereby he does avoid the Title found for the King.

This is that kind of Proceeding which is called a *Monstrance de Droit*. And in this sort of Proceeding, the Subject is in the Nature of a Defendant, and comes in and pleads to a Title found for the King: And the Judgment is, *quod manus Domini Regis amoveantur*. This appears 1 Co. 157. *Digg's Case*; 4 Co. *Commonalty of Sadlers Case*; and by the Cases in Co. *Entries*. So is the Case of *Coningsby* and *Malham*, in *Kelway's Reports*, 154. In which Case it is said, *that the amoveas manus is the End of every Suit, where a Man comes in to interplead with the King; for without that Judgment the Land will still remain in the King's Hands.* Kelw. 158. a.

And therefore, where that Judgment cannot be given, the Party shall not be admitted to traverse a false *Office*, or to interplead with the King, tho' the Case be otherwise such as comes within the Remedy of the Statute of 36 Ed. 3.

As, where a Man has a Remainder, or Reversion, expectant upon an Estate of Freehold,
without

without any Rent, or Profit, and a false Office is found of the dying seized of such a Remainder, or Reversion; He shall not be admitted to traverse this false Office, because the Judgment cannot be given, *quod manus Domini Regis amoveantur*: As was adjudg'd in the Case of the Countess of Rutland. 2 Inst. 688.

But in these Cases before Us, neither does the Party ask any such Judgment; nor are the Judgments, which are brought before the Court by these Writs of Error, any thing like it.

If this be a *Monstrance de Droit*, the Judgment ought to be such as the Law hath ordained in Cases of that Nature; But here the Suit is plainly in the Nature of a Writ of Annuity; the Party concludes his Demand in the same Manner as in a Declaration for an Annuity, and the Judgment is given accordingly.

III. The Third Thing I will consider is, supposing it were taken for granted, that a *Monstrance de Droit* did lie at Common Law; and that this Suit of *Williamson's* is such a *Monstrance de Droit*; whether yet this *Monstrance de Droit* be the proper Remedy maintainable at Common Law in a Case of this Nature? For, as *Fineux* says, in the Case of *Coningsby and Malham*, *Kel. 157. b.* tho' the Parties have ever so good a Right, yet they must come to the Possession of what they have a Right to by the ordinary Method of Law; for, says he, if a Man owes me Money I cannot take it out of his Purse, nor can I recover it by an improper Action.

Let us see then what this Suit is for ; and what was the Course taken at Common Law to recover a Thing of this Nature.

The Suit is for the Arrears of an Annuity, granted to Sir *Robert Vyner* and his Heirs, by the King's Predecessors, out of a Branch of the Hereditary Revenue of the Crown, and by him assigned to *Williamson*; as also for the growing Payments, that they may be answered from Time to Time, as they become due.

Now, as far as I can find, by the Common Law, in all Cases where Arrears of an Annuity, or annual Rent or Sum, were demanded by the Subject from the Crown; (whether it was originally granted by the Crown out of any Part of the Revenue; or was issuing out of Lands which afterwards came to the Crown;) the only Remedy, which the Subject had for Recovering thereof, was by *Petition* to the King.

The Authorities are very express and full in this Matter.

Suppose a Man hath a Rent-Charge, or a Rent-Service, or other Rent, issuing out of Land by Prescription, or Grant; and this Land comes to the King by Grant, or Forfeiture: In all such Cases the Owner of the Rent is put to his *Petition* to the King, and hath no other Remedy whatsoever.

In like Manner, if a Man be seized of Land, and acknowledges a Statute, or Recognizance, and before Execution taken, the Estate comes to the King by Attainder; or the Ter-Tenant grants to the King by Deed inrolled: In either Case the Conuzee is put to

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his *Petition*, and has no other Remedy; unless the whole Matter be specially found in the Office. 4 *Ed.* 4. 23. *Stamford de Prerog. Regis* 75. c. 22. *Kelway* 155. b.

A Man holds Lands of the King in Chief; and other Lands, by Knights Service and Rent, of other Lords; and dies, leaving his Heir within Age: The King seizes the Body and Lands held in Chief; and also the other Lands, which the Ancestor held of other Lords. The Heir shall pay his Relief to the other Lords when he comes to Age: And as to the Rent during the Nonage of the Heir; the Lords shall sue to the King by *Petition* to have the Rent of the Lands, which are held of them by the Heir, who is in Ward to the King; and shall have it by this Means. So is 13 *H.* 7. 15. *pl.* 11. 24 *Ed.* 3. 24. *pl.* 5.

Fitz. Re-
lief 7.
Traverse
43.

And that the Law is so, is affirmed in all the Abridgments of the Case; and particularly *Bro. Title Pet.* 43. makes a Special Reference to the Statute 2 & 3 *Ed.* 6. c. 8. of *Offices*.

And that the Law continued so till the making of that Statute, does sufficiently appear by the Statute itself. For in the seventh Branch of that Act, it is expressly taken Notice of, That, in the Case abovementioned, the Mesn Lords would spare the Rents due to them for the Lands holden of them during the King's Possession; and after the Heir had sued his Livery, would distrain upon him for the Arrearages, where they should have sued by *Petition* to the King's Majesty to have obtained the same out of the King's Hands. And that Statute enacts a new Relief for the Mesn Lords;

That

That they should receive the Rents, during the Wardship, from the King's Officers appointed to receive the Profits of the Wards Lands: And that such Officers Payment, and the Acquittance of the Mesn Lord, should be a good Discharge to the Officers.

From hence it is plain, that, before this Act, there was no Remedy for the Mesn Lords, but by *Petition*. And it may be observed, that the Remedy given is by sending them to the Receivers in the Country, and not to the Receipt of the Exchequer. And this Clause does explain the general Words of the Preamble of that Statute: Which takes Notice, *that Persons having any Rent, Common, Fee, or other Profit Appender, out of Lands, or Tenements, specified in such Offices, or Inquisitions, were without Remedy to obtain or have the same, by any Traverse, or other speedy Mean, without great and excessive Charges, during the King's Interest therein.*

And since that Statute, in the Case of *Wicks and Dennis*, 31 & 32 El. 1 Leon. 190. It was holden by the whole Court, that during the Queen's Possession of the Land, the Rent-Charge issuing out of it is only recoverable by *Petition*: Altho' the Demand of the Rent was agreed to be good; because in his *Petition* the Party must shew that he did demand the Rent.

And as the Law is plainly so, where a Person has a Title to a Rent, by Grant of a Subject, out of Lands which come to the Possession of the King; so the Case is to all Purposes the same, where he has a Title to a Rent, or yearly Sum, by Letters Patent from the Crown.

13 Ed. 4, 5. pl. 15. The King grants a Rent out of his Manor: *The Manor is not charged, but the King by Petition.* These are the Words of the Book.

And as that Book is an exprefs Authority that this was the Law, so was the Practice accordingly.

In 18 Ed. 1. *Ryley's Placita Parliamentaria* 52. The Abbess *de Ponte Eboraldi* sues to the King by *Petition* for the Arrears of an Annuity of 10 l. per Ann. granted by H. 3. to the Abbess of that Place, and her Successors.

In 35 Ed. 1. *Ryley* 329. is the *Petition* of *John Hernigod* for the Arrears of a Rent of 7 s. 8 d.

So also was *Everle's Case*, and the Abbot and Covent of *Warden's Case*, before mentioned.

In like Manner, it appears by the same Book, that the same Method was to be taken for recovering a Rent, &c. granted by a Subject out of Lands which afterwards came to the Crown.

33 Ed. 1. *Ryley* 256, 257. *Bisefend's Case*; & 245. the Abbot and Covent of *Oseney's Case*. So, where *Peché*, the Tenant of the Bishop of *Ely*, who held of the Bishop, as Part of his Barony, four Knights Fees, granted these Lands to the King, the Bishop was put to his *Petition* to recover his Services. 33 Ed. 1. *Ryley* 249.

Upon the Exile of the Jews, in the Time of Ed. 1. divers Lands came to the King's Hands by way of Escheat: The Chief Lords, of whom those Lands were holden, had no Remedy

Remedy to recover their Services in Arrear,
but by *Petition*. 21 Ed. 1. Ryley 129.

By all these Authorities, and by many others which I could cite, both antient and modern, it is plain, that if the Subject was to recover a Rent, or Annuity, or other Charge, from the Crown; whether it was a Rent, or Annuity, originally granted by the King; or issuing out of Lands, which by subsequent Title came to be in the King's Hands; in all Cases the Remedy to come at it was by *Petition* to the Person of the King: And no other Method can be shewn to have been practised at Common Law.

Indeed I take it to be generally true, that in all Cases where the Subject is in the Nature of a *Plaintiff*, to recover any thing from the King, his only Remedy, at Common Law, is to sue by *Petition* to the Person of the King. I say, where the Subject comes as a *Plaintiff*. For, as I said before, when, upon a Title found for the King by *Office*, the Subject comes in to traverse the King's Title, or to shew his own Right, he comes in in the Nature of a *Defendant*; and is admitted to interplead in the Case with the King in Defence of his Title, which otherwise would be defeated by finding the *Office*. And to shew that this was so, I would take Notice of several Instances.

That, in Cases of Debts owing by the Crown, the Subjects Remedy was by *Petition*, appears by *Aynesham's Case*, Ryley 251. Which is a *Petition* for 19 l. due for Work done at Carnarvan Castle.

So Ryley 251. the Executors of *John Estrateleug* petition for CXXXII l. due to their

*One article of impeachment
ag^t Lord Som. was
partly for this position.
See Chas. 1. Deb.
Com. 163.*

their Testator for Wages. The Answer is remarkable; for there is a Latitude taken, which will very ill agree with the Notion that is taken up in this Case: *Habeantur unde laborato in Canc. Theob. & Camerlar' de XXXIII. in partem solutionis.*

So the Case of *Terward Je Galeys* for *LVIID Ryley* 414.

In like Manner, in the same Book 253. 33 Ed. 1. several Parties sue by *Petition* for Money and Goods taken for the King's Use; and also for Wages due to them; and for Debts owing to them by the King. The Answer is, *Rex ordinavit per Concilium Theob. rari & Baranum de Seaccario quod satisfieret eis quam citius fieri poterit; ita quod contentos se viderent.* And this is an Answer given to a *Petition* presented to the King in Parliament; and therefore we have Reason to conclude it to be warranted by Law. They must be content, and they shall be paid, *quam citius fieri poterit.*

The Parties, in these Cases, first go to the King by *Petition*; It is by Him they are sent to the Exchequer; and it is by a Writ under the Great Seal, that the Exchequer is empowered to act. Nor can any such Writ be found, (unless in a very few Instances, where it is meer Matter of Account,) in which the Treasurer is not joined with the Barons.

So far was it from being taken to be Law at that Time, that the Barons had any original Power of paying the King's Debts; or of commanding Annuities, granted by the King or his Progenitors, to be paid, when the Persons applied to Them for such Payment.

But

But perhaps it may be objected, that it is not to be inferred, because *Petitions* were brought in these Cases, that therefore it was of Necessity that the Subject should pursue that Course, and could take no other Way. It might be reasonable to require from those who object thus, that they should produce some *Precedents* at least, of another Remedy taken.

But I think there is a good Answer to be given to this Objection. All these *Petitions* which I have mentioned, are after the Stat. 8 Ed. 1. Ryley 442. where Notice is taken, *That the Business of Parliament was interrupted by a Multitude of Petitions, which might be redressed by the Chancellor, and Justices.* Wherefore it is thereby Enacted, *That Petitions which touch the Seal should come first to the Chancellor; those which touch the Exchequer, to the Exchequer; and those which touch the Justices, or the Law of the Land, should come to the Justices: And if the Business be so great, or so de grace, that the Chancellor, or Others, cannot do them without the King, then the Petitions shall be brought before the King to know his Pleasure; so that no Petitions come before the King and his Council, but by the Hands of the Chancellor; and the other chief Ministers; that the King and his Council may attend the great Affairs of the King's Realm, and his Foreign Dominions.*

This Law being made, there is Reason to conclude that all *Petitions* brought before the King in Parliament after this Time, and answered there, were brought according to the Method of this Law; and were of the Nature of such *Petitions* as ought to be brought to the Person of the King. And

And that *Petitions* did lie for a Chattel, as well as for a Freehold, does appear 37 *Aff. pl. 11. Bro. Pet. 14.* If Tenant by Statute Merchant be ousted he may have a *Petition*, and shall be restored. *Vide 9 H. 4. 4. Bro. Pet. 9.*

9 H. 6. 21. *Bro. Pet. 2.* If the Subject be ousted of his Term, he shall have his *Petition*.

7 H. 7. 11. Of a Chattel Real, a Man shall have his *Petition of Right*, as of his Freehold.

34 H. 6. 31. *Bro. Pet. 3.* A Man shall have a *Petition of Right* for Goods and Chattels; and the King indorses it in the usual Form.

It is said indeed, 1 H. 7. 3. *Bro. Pet. 19.* That a *Petition* will not lie of a Chattel.

And admitting there was any Doubt as to that Point, in the present Suits we are in the Case of a Freehold.

I will now enter into the Consideration of the two Cases, which have been principally insisted upon, as warranting the Proceedings in the Suits which are now depending. I mean the Cases of Sir H. Neville and Sir T. Wroth: Both of them reported by *Plowden*; and both adjudged in the Reign of Queen Elizabeth.

Indeed the Pleadings in the Cases before Us have been formed upon these Precedents.

Plo.Com.
377.

Sir H. Neville exhibits to the Barons a Writing of the late Archbishop of Canterbury, dated the 15th of Nov. 22 H. 8. purporting to be a Grant to him, and one Sir Ed. Neville, (lately attainted for Treason,) of the Office of Keeper of Aldington Park, and

of the Rent of 3 *l.* 10 *d.* for the Exercise of the Office, to be received out of the Manor of *Aldington*, *Habendum* for their Lives and the Life of the Survivor; which Grant was confirmed by the Prior and Covent; and prays it may be inrolled.

The Barons receive the Writing, and cause it to be read and inrolled. And thereupon Sir *H. Neville* alledges, that he is three Years in Arrear, and that during that Time the Manor has been, and does remain in the King's Hands; and prays that the Writing may be allowed, and the Arrears paid him, and the growing Rent during his Life.

The Attorney General demurs. And after eight or nine Years depending, Judgment is given, *That the Writing should be allowed, and the Arrears paid at the Receipt of the Exchequer, and also the growing Rent.*

Then Sir *Henry* prays a Writ to the Treasurer and Chamberlains of the Receipt to execute the Judgment; which is granted.

It has been observed, that the Questions made in this Case were only,

1. If the Office was forfeited by the Attainder of Sir *Edward*?
2. Whether the Annuity was not gone, tho' the Office was not forfeited?

Not one Word is said touching the Nature and Manner of the Proceedings throughout the Whole Debate of the Case, tho' it lasted so many Years.

'Tis true *Plowden* adds a Remark of his own, *That thereby might be seen the Order and Form how One, who has a Rent out of Lands in the King's Hands, may come to it by Petition to the Court of Exchequer, without Petition to the*

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Person of the King: And how he shall have the Judgment executed. For it is not the Order to command by Word of Mouth that the Payment be made; but a Writ in Form aforesaid shall be awarded by the Barons: Which is a judicial Writ under the Seal of the Exchequer, and is a sufficient Warrant to the Treasurer and Chamberlains to pay the Arrears, and growing Rent.

This Observation of Plowden's hath been variously interpreted in speaking to these Cases, according as the Persons concluded differently.

It may be said, his Observation is an Argument that he approved of the Method, and look'd upon it as Law.

But it may be also inferred,

1. That it is an Observation which he founded only on that Case; for he says *from this Record you may see good Reader.*

2. That it was new to him; otherwise he had not added such a Remark to his Report.

3. That he looked on the other way by *Petition*, as the known Method in Cases of that Nature.

4. That this was purely a Reflection of his own. For he is so exact a Reporter, that he sets down particularly when the Point is debated in Court, and when he has it in Private from one of the Judges; as appears in the Case of *Sir Thomas Wroth*, fol. 455. b.

5. He only says this Writ is a *sufficient Warrant* to the Treasurer and Chamberlains of the Receipt to pay the Money, not that it is Compulsory to enforce the Payment.

Plowd. The other Case of *Sir Thomas Wroth* was
Com. 452. this,

He

He exhibits to the Barons Letters Patent, dated the 13th of *October*, 38 H. 8. whereby the King appointed him Gentleman Usher of the Privy Chamber to Prince *Edward*, and granted to him, for the Exercise of the Office, an Annuity of 20 l. *per Annum* during Life, to be received by the Hands of the Treasurer of the Court of *Augmentations*, out of such of the Treasure of the said Revenues as should be in his Hands. And whereas he had served the Prince from *Lady-Day* 36 H. 8. to that Time, and had received no Allowance, the King thereby grants for his Attendance for the Time past, as much Money as the said Annuity of 20 l. *per Ann.* from *Lady-Day* 36 H. 8. to that Time amounted to, to be received as aforesaid. And he prays the Letters Patent may be inrolled: And the same are received by the Barons, and ordered to be read and inrolled.

Then he alledges that King H. 8. died the 28th of *January* 38 *Regni sui*; and that he exercised the Office during the Life of King *Edward*. And then sets forth the Clause in the Act of 1 *Mar.* for the Alteration, Union, Transposing, or Determination of the Court of *Augmentations*, &c. whereby it was provided, that *That Act should not extend to extinguish or take away any Annuity, which any Person had Title to, or ought to have, by Letters Patent, or other Writing sufficient, under the Seal of the Court of Augmentations, before the 7th of July then last: But that the same should be paid out of the Treasure of the Queen, in the Court to which the Court of Augmentations should be annexed; or in any new Court which should be erected instead of the Court of Augmentations;*

or, in Default thereof, in any Court where there should be sufficient of the Queen's Treasure.

He says the Annuity was so many Years in Arrear; and prays as in Sir H. Nevill's Case.

And there is a Demurrer; and Judgment for allowing the Letters Patent, and for paying the Arrears, and growing Payments; and a Writ to the Treasurer and Chamberlains of the Receipt accordingly.

There were five Points debated, and determined in this Case.

1. If there did not want an Averment of the Service done to the Prince, in order to entitle himself to the Sum granted for his Attendance for the Time past?

2. If the Annuity was determinable by the Nonfeazance of the Service to the Prince?

3. If the Service might be done to the Prince, when King?

4. If the Annuity was payable during the Life of Sir Thomas Wroth?

5. If this Grant did bind the Successor? It not being granted by King H. 8. for Him, his Heirs and Successors. And this seems to be the great Point of the Case; the Judgment being expressed to be given upon View of several Judgments, where, without those Words, such Letters Patent had been allowed.

Plowden sets down the Effect of the Writ of Execution; and the Writ itself is to be seen at large, *Co. la. Scac. Pasc. 4 Eliz. Rot. 52.*

He says, afterwards Payment was made of the Arrears according to the Effect of the Writ. I observe, it is not said by Force of the Writ.

The Truth is, upon that Writ nothing was paid, Sir *Thomas Wroth* dying not long after. But the 5th of November, 15 *Eliz. Osborn, Morris, Wroth* and *Clerk*, his Executors, produced the former Writ in the Court, and furnished that Sir *Thomas Wroth* was dead, having made his Will, and them Executors; and that Sir *Thomas Wroth* had not received any Part of the Arrears: and so prayed another Writ, which was granted; and afterwards the Arrears were paid.

The same Observation lies upon this Case as on the other, that in the whole Debate, which lasted so long, nothing was said as to the Nature and Manner of the Suit. But by the Points made in the Case, and by the Judgment itself, and by what *Plowden* tells us that *Sanders Ch. Baron* added to the Report, it is plain the only Question was upon the Matter in Law, whether the Annuity was determined or not.

All the Judges, who argued before my Ld. Ch. Justice *Treby*, seemed to lay the great Strefs of their Arguments upon these Cases.

He applied himself to shew, that the Proceedings in these two Cases are founded upon particular Reasons, and not upon the Common Law, or the Course of the Exchequer. And for that Cause it was, that they had never been cited in any Law Book as Precedents, warranting any such Jurisdiction in the Court of Exchequer, as was exercised in those Cases.

He observed, that both these Cases were for Annuities payable in the Court of *Augmentations*. Sir *Thomas Wroth's* Case being for an Annuity granted under the Seal of that Court;

Court; and *Neville's* Annuity being also payable there. For all Lands purchased, or to be purchased by King *Henry* the 8th, were by the Stat. 27 *H. 8. c. 27.* put under the Jurisdiction of that Court; and the Manor of *Aldington* was purchased afterwards by Him, of the Archbishop of *Canterbury*, in the 32d Year of his Reign; the Deed of Bargain and Sale being dated the 11th of *Feb.* in that Year, and inrolled in the Court of *Augmentations*: Consequently that Manor was under the Survey of that Court. And in the Covenant against Incumbrances, which was in that Deed of Bargain and Sale, there was an Exception of this Fee payable to Sir *H. Neville*.

He observed further, that by the Act made the First of Queen *Mary*, cap. 10. and that Queen's Letters Patent thereupon, this Court was united to the Court of Exchequer: And that by a Clause in that Act, all the Annuities payable in the Court of *Augmentations* were saved; and all such Unitings and Annexations, &c. and all Orders made by the Queen touching the Revenues of such Court, and expressed in such Letters Patent, are Enacted to be of the same Force, as if declared by Parliament.

That after the Union, in these Cases the Exchequer acted according to the Power given by that Statute, and the Letters Patent.

That the Court of *Augmentations* proceeded in a summary Way; and that many Decrees of the same Nature with these were to be found in the Records of that Court.

And He took Notice, that it was remembered by a very learned Judge, who argued the

the same Way with Him in the Court of Exchequer, that my Lord Ch. Justice *Hale* had formerly declared, that these Cases of *Neville* and *Wroth* did depend on particular Reasons; and were not to be urged for Precedents of the Jurisdiction of the Exchequer.

My Lord Ch. Justice of the King's Bench, in his Argument, did very particularly apply Himself to take off the Force of this Objection.

The first Thing I observed him to urge, as an Argument that these Cases were adjudged by the proper Jurisdiction of the Court of Exchequer, and not by any Power derived to it by the Union of the Court of *Augmentations*, was drawn from *Neville's* Case; in the Pleadings of which no Mention is made of the Court of *Augmentations*, or of any Statute relating to it.

He did admit, that the Manor of *Aldington*, which was charged with the Rent, was purchased by King *Henry* the *Eighth*, and so under the Survey of the Court of *Augmentations*; but that being made no Part of the Case, He said that Case was no otherwise to be regarded than as an ordinary Proceeding in the Court of Exchequer, by a Grantee of a Rent issuing out of Lands which came afterwards to the Crown.

I shall not here repeat what I have already shewn, that a Grantee of a Rent issuing out of Lands, which come to the Crown subsequent to his Grant, could not proceed in this Manner to recover it.

But I will observe as to this Case of *Neville*; First, That it is not denied, but if the Court of *Augmentations* had subsisted, it had

been

been under the Survey of that Court, and the Court of Exchequer could have had no Jurisdiction over it; so that it came not into the Governance of the Exchequer, till the Dissolution of that Court.

2dly, That the *Court of Augmentations* had a Power of ordering Payments of such Fees, or Annuities, will appear plainly, I think, by what I shall shew presently.

3dly, It appears that this Fee, or Annuity, had been paid not only during the Reigns of *Henry the Eighth*, and *Edward the Sixth*, when the *Court of Augmentations* subsisted; but also during the whole Reign of *Queen Mary*; which was for several Years after the Dissolution of that Court. The Arrrears sued for being only for three Years, from *Michaelmas 5 & 6 Philip & Mary*, (which was the *Michaelmas* before the Death of *Queen Mary*, who died the 17th of *November 1559*;) to *Michaelmas the Third of Queen Elizabeth*.

So that this Grant had been allowed before in the Court of Exchequer, and Payments had been made upon it there for several Years: And therefore there was no Occasion to take any Notice of the *Court of Augmentations* on the one Side; or, of the other Side, to object that it was not set out. But the Matter of Law only came under the Consideration of the Court, whether, by the Attainder of one of the Grantees, the Annuity and the Office were determined. Which Objection to the Payment of the Annuity, as it is probable, had been but lately observed, altho' *Sir Ed. Neville* had been attainted 30 *H. 8.* for a Fact alledged to be committed the 12th of *July*, 29 *H. 8.*

But my Lord Ch. Justice of the King's Bench did principally insist upon two other Points, in answer to what was said by my Lord Ch. Justice of the Common Pleas as to this Matter.

1. That the *Court of Augmentations* was never united to the Court of Exchequer.

2. That the *Court of Augmentations* had no such special Power given to it, either by Act of Parliament, or Letters Patent, for Relief of Grantees of Rents; and consequently, tho' there had been an Union of that Court to the Court of Exchequer, yet the Court of Exchequer could not derive any Power of acting in such a Manner from that Union.

To prove the *First* of these Positions, *Dyer* 216. *a.* and *Coke's 4th Inst.* 122. were cited. Where it is said to be resolved by all the Judges, 4 *Eliz.* that the Union was but in Shew, and was really Void. For Queen *Mary*, by her Letters Patent of the 23d of *January* in the *first* Year of her Reign, having dissolved the *Court of Augmentations*, and by other Letters Patent, dated the next Day, uniting the same to the Court of Exchequer, the second Letters Patent came too late, and were utterly Void. And therefore it was argued, there could be no Accession of Power to the Court of Exchequer, by a Union that was absolutely Void: But by the Dissolution of the *Court of Augmentations*, the Revenues of that Court fell naturally under the Government of the Exchequer; and Sir *T. Wroth* and Sir *H. Neville* came to the Court of Exchequer, as to an Original Court of Revenue.

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But notwithstanding these Books, and the Weight such a Resolution may seem to have, I think I shall be able to make it out clearly, that the Authority, given by the Act of Parliament *Primo Mariæ*, was well executed by Her two several Letters Patent of the 23d and 24th of *January*; and that the Court of *Augmentations* was thereby effectually united to the Exchequer.

For, *First*, The Act of Parliament did empower the Queen to *alter, change, unite, transpose, dissolve, or determine the Court of Augmentations and Revenues of the King's Crown, and the other Courts therein mentioned; and to reduce the same, or any of them, into one, two, or more Courts; or unite, or annex the said Courts, or any two, or more of them together, or to any other of her Courts of Record; or to erect out of the same any other new Court.*

Secondly, The Queen did intend to execute her Power, by uniting that Court to the Exchequer. That appears most plainly by both the Letters Patent, which recite the Act, and declare that the Queen did intend to put the Act in Execution. And the Letters Patent of the 24th do recite, *that it was with that Intent, viz. of putting the Act in Execution, that She had, by Letters Patent of the Day before, dissolved the said Court: And She did thereby unite, transpose and annex the said Court dissolved to the Court of Exchequer; and did thereby appoint all the Lands and Hereditaments, which at the Time of the Dissolution of the said Court, were in the Order or Survey thereof, to be in the Order or Survey of the Court of Exchequer, according to the Ar-*
ticles.

ticles and Ordinances in the Schedule annexed to those Letters Patent.

Thirdly, Every thing ought to be expounded favourably that the Queen's Intention might take Effect; especially, when She acts in Pursuance of an Act of Parliament, and for the more speedy and sure answering of her Revenue, as the Intent of the Act is declared to be.

Fourthly, The Letters Patent, tho' bearing several Dates, may, and ought to be expounded as one and the same Act, as in many other Cases; especially, when done in Execution of an Act of Parliament.

Fifthly, As to the *Quasi absurdum & impossibile*, in Dyer: We are not now discoursing upon a Subject of Philosophy, nor speaking of the natural Existence of Things; there indeed, it would be absurd to say, that what was dissolved and annihilated one Day, should yet have such an Existence as to be united to any thing the Day following: But we are speaking upon a legal Subject, touching the Construction of a Law, where Fictions, and Relations, and Conclusions have Place.

That which one Act of Parliament says shall be dissolved to-day, another Act may say shall be to all Intents revived and united to-morrow; and all Men are concluded to say, that the Union is not real to all Intents of Law. And as this may be done by several Acts, so the same Act may say, that a Court shall be dissolved, and that the said Court so dissolved shall be united; or, in other Words, may say that the Queen by her Letters Patent may dissolve a Court to-day, and by Letters Patent of the next Day may

unite the same Court to another: And when that is done, notwithstanding the seeming Absurdity, it will be as really united to all Intents as if it had never been dissolved. Now that in effect is said here. The Act says, *the Queen may alter, change, dissolve or determine the Courts; and may reduce the Courts to one or more, or unite and annex the same to any other Court.* Here the Queen literally pursued both Parts: *She did dissolve it; and She united and annexed it.*

The Act further says, *such Alterations, Dissolvings, and Annexings, declared and set forth in such Letters Patent shall be of the same Force to all Intents, as tho' the same were set forth and declared by Authority of Parliament:* And if this had been done by Act of Parliament, no Body could have said but that it had been well united.

Sixthly, All the Parts and Business of the Court of *Augmentations* were actually distributed and settled in the respective Offices of the Exchequer, according to the Order of the Schedule annexed to the Letters Patent of Union, and have been continued to this Day under these Orders. And would it not be strange, that the Letters Patent of the 24th should be taken to be wholly void, but the Schedule annexed to them should be good and effectual, and take Place, and be put in Execution to all Purposes?

Seventhly, It is expressly and fully declared by Act of Parliament, that the Court of *Augmentations* was united to the Court of Exchequer. I mean the Stat. 1 *Eliz. cap. 4. §. 15. for Restitution of the First-fruits to the Crown.*

That Stat. takes Notice that Queen Mary, by the Act *Primo Mariæ*, cap. 10. was empowered to alter or determine the Courts of First-fruits, Augmentations, and other Courts therein expressed, or to unite the said Courts or any of them together, or to any other Courts of Record, as should be thought most Convenient for the answering of her Revenues: By Authority of which Act the late Queen by four several Letters Patent, whereof two bear Date the 23d of January, in the first Year of her Reign, and the other two the 24th Day of the same January, did not only dissolve, determine, and extinguish the said Court, commonly called, the Court of Augmentations and Revenues of the Crown, and the Courts of First-fruits and Tenths, and the Jurisdiction and Authority thereof; but also did unite, transpose and annex the said Courts so dissolved, to the said Court of Exchequer, there to be and continue as a Member and Parcel of the said Court; and did appoint the Revenues then answerable in the said Courts, to the Order, Rule, Survey, and Governance of the Court of Exchequer, there to be answered and accounted for ever, in such Order and Form, as in the said Letters Patent, and two Schedules thereto annexed, is mentioned and declared.

Had the Act rested there, unquestionably it had done enough to make good what I hold: But the Act goes on further and says; By Reason of which Premises, the said perpetual Revenues of First-fruits and Tenths, (which was the subject Matter of that Act,) and the Revenues relating thereto were ordered and accounted for in the Court of Exchequer.

Then the Act proceeds to recite the Act 2 & 3 Phil. & Mary, for taking away the
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First-fruits and Tenths from the Crown and repeals that Act: And enacts, *That the same shall be revived and united to the Crown in the same Estate, Degree and Condition, and in as ample Manner as the same were in Queen Mary before the Act of Repeal: And that the said Revenue should be in the Order, Survey, Rule, and Governance of the said Court of Exchequer, in every Degree, Sort, and Condition, as they were, at and before the said 8th Day of August, in the 2 & 3 of Phil. & Mary; from which Day that Act took Effect.*

Now whether we are to depend upon the Authority of an Act of Parliament, which does expressly declare, that by the Force of the Act *Primo Mariæ*, and by Virtue of the Letters Patent of the 23d and 24th Days of *January* in the same Year, the Court of *Augmentations* was united, transposed and annexed to the Court of Exchequer; or whether we are to believe the Judges in *Dyer*, who say that it was not united, does seem no difficult Question to decide.

These two Things must be observed.

1st, That by this Act the *First-fruits and Tenths* are put under the Survey, and Governance of the Exchequer, only as they were at the Time of the Act 2 & 3 *Phil. & Mary*; and by the same Act it is declared, in what Manner they were then annexed, and put under that Governance; that is, according to the Letters Patent *Primo Mariæ*: So that they are annexed to the Court of Exchequer, in the Form, and by Virtue of those Letters Patent, or not all. And the Annexation of
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the Court of *Augmentations* being exactly in the same Manner as that of the *First-fruits* if the one was good, the other must be so.

2dly, That if there was not such an Union, it may be questionable, if the Exchequer at this Day has any Jurisdiction as to the Revenues which were under the Survey of the Court of *Augmentations*; there being a Clause in the Act 27 H. 8. cap. 27. that, *all Proceſſes out of the Exchequer, to or againſt any Perſons, for any Rents, Iſſues or Profits, relating to any the Lands, which by that Act were limited, to be under the Survey of the Court of Augmentations, ſhould be clearly Void, and of none Effect.*

If any thing more was neceſſary to be added after ſuch an Authority, it is plain, that it was the received Opinion of the whole Kingdom, and of the Court of Exchequer itſelf, that the Court of *Augmentations* was united to that Court. This will abundantly appear by the Caſe of the Executors of Sir *Walter Mildmay*, Chancellor of the Exchequer, reported in the Earl of *Devon's Caſe*, 11 Co. 91. which Caſe ariſes upon a Warrant of the Lord Treafurer, and Under-Treafurer, for allowing to Sir *Walter Mildmay* 140 l. yearly, in Conſideration of the Increate of his Buſineſs, by reaſon of the Annexation of the Court of *Augmentations*, and *First-fruits* to the Court of Exchequer.

I will yet add one more Authority to prove this; and it is in the Office of the King's Remembrancer, *Mich. 1 & 2 Phil. & Mar. Rot. 175.* and was the Caſe of a Lord Ch. Juſtice of the King's Bench.

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There it is found in the Accounts of the late Treasurer of the Court of *Augmentations*, that there had been granted to Sir *Thomas Bromley*, Chief Justice of the King and Queen's Bench, an annual Fee of 6*l.* 13*s.* 4*d.* quarterly, out of the Treasure in the Hands of the Treasurer of that Court, for divers Causes therein mentioned; which Fee had been paid to *Michaelmas Primo Mariæ*. And thereupon Sir *Thomas Bromley* comes in propria Persona sua, & pro eo quod dicta Domina Regina nunc annexavit & univit dictam nuper Curiam Augmentationum & Revencionum Corone Regie huic Curie Scaccarii sui, (prout in memorandis hujus Scaccarii de Anno Primo Regni sui, viz. Inter Record' de Termino Sci' Hill' Rotlo' &c. ex parte hujus Remem', plenius liquet de Recordo,) petit quod ipse tam de dicto annuali feodo 6*l.* 13*s.* 4*d.* &c. durante vita sua, quam de 10*l.* sibi de Arreragiis ejusdem feodi a festo Annunciacon' B. Mariæ Virginis Anno 7. Ed. 6. debet' & ad hoc minime solut', ad recept' hujus Scaccarii de Thesauro Dominorum Regis & Regine ibidem de tempore in tempus remanere contingen' satisfiat. Super quo, pro eo quod Scrutatis Rotulis & Mem' dict' Cur' Augm' &c. in hoc Scaccario modo remanen', It did appear that the said Fee was granted, and that it had been answered and paid at the Court of *Augmentations*, and that he was not satisfied his Arrears, as he had alledged in his Petition: Considerat' est per Barones quod eidem Thome Bromley de dicto feodo de 6*l.* 13*s.* 4*d.* per Annum ad dictos quatuor Anni Terminos durante vita sua unacum Arreragiis præd' sibi debet' ad recept' hujus Scaccarii de Thesauro, &c. ibidem de tempore in tempus remanere contingen' Satisfiat, &c.

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Here is a Judgment founded upon this very Point of the Union and Annexation of these Courts.

I have mentioned this Case, because it seems to me a very full Authority; at least the Lord Ch. Justice *Bromley* thought so. But the same thing does appear by the whole Tenor of the Proceedings of the Court of Exchequer, in relation to Cases which were before of the Jurisdiction of the *Court of Augmentations*; wherein, the summary Way, practised in that Court, was taken up, and a great Variation made from the antient manner of Proceedings in the Exchequer; which amounts to a plain Proof of this Matter, that the *Court of Augmentations* was really united to the Court of Exchequer.

I proceed now to the *Second* Thing insisted on by my Lord Ch. Justice. That, admitting it to be true that the *Court of Augmentations* was united to the Court of Exchequer, and so the Powers of that Court transferred to the Exchequer, yet it would have no Consequence to make good the Point for which it was urged; viz. that in these two Cases of *Neville* and *Wroth*, the Court of Exchequer acted as the *Court of Augmentations*, and by a Power supposed to be vested in the Exchequer by that Union: Because the *Court of Augmentations* itself had no especial Powers given to it, either by Act of Parliament, or by Letters Patent, to determine of, and give Relief to Grantees of Annuities and Rents, in the Manner it is done in *Neville's* and *Wroth's* Cases; but that all which was done in the erecting of that

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Court, was to make it a Court of Record, and a Court of Revenue to such and such Lands: The Consequence of which was, that it had all the Powers incident to a Court of Revenue, and as such could give Relief in these Cases; because in the like Cases the Court of Exchequer could, and always had given Relief.

And to make this out, several Cases of the like Nature, decreed in the *Court of Augmentations*, wherein Relief had been given to Grantees of Fees and Annuities, (which were found in a Book of that Office,) were cited as so many Authorities for this Opinion. And that, in like Manner, Relief was given in the *Court of Wards*, and in the *Court of Surveyors*, to Grantees who came thither for their Annuities; which were new erected Courts of Revenue: And therefore, if those several new erected Courts acted in that Matter without a special Authority, it was argued, that it might be concluded to be by a Right incident to them as Courts of Revenue, and in Imitation of what the Court of Exchequer, which was the old Court of Revenue, could do before by the Common Law.

This is an ingenious Turn of an Argument, which was drawn by my Lord Ch. Justice Treby to a contrary Purpose, from the Practice of those new erected Courts, if it will hold; but I think it will not.

For if it cannot be shewn that antiently, or at any time before the Union of the *Courts of Augmentations* and *First-fruits* to the Court of Exchequer, The Barons of the Exchequer did give Relief to Persons who had Grants

of Annuities out of the Revenue, or out of Lands in the Hands of the King, upon Application made to Them immediately, in the Manner we are now speaking; unless, in Cases where the Party applied to the King by *Petition*, and the Treasurer and Barons were authorised by the Great or Privy Seal, or by special Indorsement upon the *Petition*: And on the other Side, if it must be confessed, that as soon as ever these new Courts were erected, They did constantly exercise this Power: And if it also cannot be denied, but that as soon as the *Courts of Augmentations* and *First-fruits* were united to the Court of Exchequer, and not before, the Court of Exchequer began to proceed in the same Manner as those Courts did, as to Cases which were before under the Survey of those Courts: The proper Inference must be, not that those Courts, in the Exercising these Powers, did pursue the Course of the Exchequer; but on the Contrary, that the Court of Exchequer, in taking up a new Course after the Union, did act according to the Manner of the *Courts of Augmentations* and *First-fruits*.

To examine this Matter a little further, three Things are properly to be consider'd.

1st, If the Barons, as such, did at any time exercise this Power of giving Judgment for the Grantees of Rents issuing out of Lands in the King's Hands, or of Annuities granted out of the Revenues of the Crown, to be paid by the Treasurer and Chamberlains at the Receipt of the Exchequer, upon Application to Them.

I speak of what the Barons have done in the Court of Pleas; for in the Exchequer

Chamber, upon Matters of Equity, and other Grounds upon which the Chancellor and Barons are impowered to proceed, some Relief may be given in Cafes of Annuities, and Rents.

2dly, If a Power was vested in the Court of *Augmentations* to give Relief in such Cafes.

3dly, If by the Union that Power was sufficiently transferred to the Court of Exchequer.

As to the *First* of these Points I have spoken in great Measure already, by shewing,

1st, The Method taken heretofore by Suitors, who applied by *Petition* to the Person of the King.

2dly, By the Authorities I cited to shew, that in such Cafes the Party had no Relief but by *Petition*.

3dly, By shewing that amongst the Records of the Exchequer, upon all the Search I could make, I have not found any thing of this Kind before the Time of the Union.

I have been more particular in my Search during the Reigns of *H. 8.* and *Edw. 6.* And in the King's Remembrancer's Office I find, during those Reigns, and so afterwards during the Reigns of Queen *Mary* and Queen *Elizabeth*, Writs of *Liberate* to the Treasurer, and also to inferiour Officers, and *Writs de Allocatione facienda* to the Treasurer and Barons, passing the Great Seal in the same Manner as anciently, for Annuities made payable at the Receipt of the Exchequer, without any Alteration from the old Course; and likewise Writs of Privy Seal for

See ant. 10. 3

for making Allowances upon Accounts in the same Manner as formerly: So that, as to Matters properly of the Jurisdiction of the Court of Exchequer, the Proceedings are the same.

I shall proceed therefore to the *Second Point*, to shew that by Act of Parliament, and Letters Patent, the Court of *Augmentations and Revenues of the Crown* was fully invested with this Power to give Relief in such Cases as those of *Wroth and Neville*.

In Order to this I will premise, that *Henry the Eighth*, affecting Power as much as any of our Kings, and having great Designs, did early in his Reign endeavour to get some Parts of the Revenue of his Crown more immediately under his Private and Personal Direction, than the old regular Constitution of the Exchequer would allow of.

To that End, in His *Fourteenth Year*, He procured an Act of Parliament, for putting divers Lands under the Survey of Persons, commissioned by Him, and stiled his General Surveyors.

In His *Twenty-sixth Year*, when the First-fruits and Tenths were given Him in Parliament, He prevailed to have them answered in a new Method, and not in the Exchequer.

The Compositions for the First-fruits might be made with the Lord Chancellor; and the Money, or Securities were, in that Case, to remain in the Hanaper: Or the Compositions might be made with Commissioners under the Great Seal; and then the Securities taken, and the Monies paid, were to be paid and remain with the Treasurer of the King's Chamber.

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The Value of Ecclesiastical Revenues were to be enquired of by Commissions under the Great Seal, and a Certificate was to be return'd thereof, and on such Certificate the Tenths were to be assessed by the Treasurer, Chancellor, Chamberlains, and Barons of the Exchequer; but the Money was to be paid to the Treasurer of the Chamber, or as the King should appoint, and his Acquittances were made full Discharges.

The Treasurer of the Chamber is accountable only to the King, and not in the Exchequer. *4 Inst. 113.*

This Act, and the Act in the next Year for dissolving the lesser Monasteries, having made a great Change; and the King finding himself obliged to reward those who assisted his Designs, as well as to provide for the Subsistence of the Abbots, Priors and Monks, who were turned out of their Houses; and that these Matters would be very troublesome, if the old Common Law Method was to be pursued, did procure by the Act 27 H. 8. cap. 27. the Court of Augmentations to be erected, and made a Court of Record. And there were appointed for it two Seals, and a Chancellor to have the keeping of them, Who is the chief Officer; and a Treasurer, Attorney, and Solicitor, and ten Auditors, and seventeen Receivers.

The Duties of these Officers are described in the Oaths appointed for them.

And it is plain by the whole Frame of the Act, that nothing was farther from the Intention of the Law-makers, than to form this Court upon the Model of the Exchequer; on the Contrary, it is made a Court of Equity. The

[III]

The Oath of the Chancellor is, in effect, the same with that of the Chancellor of *England*. The Oath of the Treasurer is, in Effect, the same with that of the Treasurer of *England*. And the Attorney and Solicitor are sworn to be ready, at the calling of the Chancellor, to hear and determine Causes depending before the Chancellor.

The Clerk is made Register for all Decrees and Orders made by the Chancellor and Council.

The Chancellor is impowered to take Recognizances, which are to have the Effect of Recognizances taken in Chancery; and such Process, as in Chancery, is to go upon them.

And upon Issues joined in the Court, the Record is to be delivered by the Hands of the Chancellor to the Justices of the King's Bench, as upon Issues joined in Chancery.

The Process of the Court is to be after the Manner of the Court of the Dutchy of *Lancaster*: And the Fees of the Officers, &c. are to be such as in the Dutchy Court. And all Process out of the Exchequer, as to any Lands put under the Jurisdiction of this Court, is Enacted to be void.

I think then, as to the first Matter upon this Act, nothing can be more clear, than that it was not intended, that this Court should be another such Court of Revenue as the Exchequer was.

For, 1st, The very Institution of it had been useless and absurd; for the Exchequer could have done the Business as well.

2^{dly}, It is in Part conformed to the Court of Chancery, but principally to the Court of the

the Dutchy; both which are Courts of Equity.

3dly, It was plainly intended to be a Court of Equity in its Institution, and to proceed by way of Decrees, and act according to Discretion; and therefore not to be like the Court of Exchequer, which is a Court of Law; I mean the Court of Pleas, held before the Barons; for the Court of Equity in the Exchequer is quite of another Consideration, and the present Cases have no Relation to it.

This Statute, for *Erecting the Court of Augmentations*, proceeds to appoint the Treasurer to account before the Chancellor, and two of the Auditors.

The Treasurer is to be allowed *all such Sums as he shall pay to Patentees of any Offices, Fees or Annuities to be granted under the Seal of that Court: Or to any other Persons, by Virtue of the King's Warrant, or by Bill signed: Or as he shall be commanded to pay by any Bill signed with the Hands of the Chancellor, Attorney and Solicitor, or any two of them, upon such Consideration as shall be thought Convenient by their Discretions.*

See then how far this Court is impowered to give Relief to Grantees of Fees and Annuities.

1st, The Treasurer is put under the Direction of the Chancellor, Attorney and Solicitor, or any two of them; and to account before the Chancellor.

2dly, He is to be allowed *such Sums as he shall pay to Patentees for Offices, Fees and Annuities granted under the Seal of the Court; which is directly the Case of Sir Tho. Wroth.*

3dly, He is to pay such Sums, as he shall be commanded to pay by any Bill signed and subscribed with the Hands of the Chancellor, Attorney and Solicitor, or any two of them, upon such Consideration as shall be thought Convenient by their Discretions.

By the Act 37 H. 8. cap. 4. and 1 Edw. 6. cap. 14. the Chantry Lands are put under the Survey of the Court of Augmentations, or such other Court as the King pleased.

My Lord Ch. Justice Treby did observe, that the Decrees themselves of this Court were signed on the Record by the Chancellor, Attorney and Solicitor, or two of them; which not being practised in any other Court, might be very well taken up in Pursuance of this Clause, that so they might, within the Letter of the Act, be Warrants to the Treasurer for Payment.

I have a full Authority, which will give Strength to this Observation of his, that those Decrees were looked upon as *Bills signed* within the Meaning of the Act; which I find, amongst the Decrees of the Court of Augmentations, 4 Ed. 6. made in the Behalf of the Poor of St. John's Walbrooke, upon a Petition of the Parson and Church-wardens, reciting a Petition to the Chancellor of the Court of Augmentations in the same Year, and an Order thereupon, for the Payment of some Money which the King had given and appointed for the Relief of poor People: And it is decreed thereupon, that the Parson and Church-wardens shall have the Sum demanded, to be paid by the Hands of the Treasurer of this Court; and this Bill signed by the Hand of the

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Chancellor,

Chancellor, &c. shall be to the Treasurer of the said Court a sufficient Warrant.

Now without going further, I think we may reasonably conclude Sir H. Neville's Case to have come within this Clause. For the Manor of *Aldington* came into the King's Hands, 31 H. 8: And Sir H. Neville's Annuity having been answered till *Michaelmas* before the Death of Queen Mary, there is little Doubt to be made, but that he had a Decree in the Court of *Augmentations* for it; which was the Warrant for Payment thereof, and which continued so before and after the Union of that Court to the Exchequer, till the Objection upon the Attainder of Sir Ed. Neville was made, and taken off.

As a farther Confirmation of what I said, relating to the Design which King Henry the Eighth had, of making himself more absolute Master of his Revenue, by excluding it from the regular Jurisdiction of the Exchequer; In the *Thirty-second* Year of his Reign, c. 45. the Court of *First-fruits and Tenths* is erected, according to the Model and Scheme of the Court of *Augmentations*: And in the same Year the Court of *Wards* is set up; being formed much after the same Manner, and the whole Revenue to be answered to the Treasurer of the Chamber.

In the *Thirty-third* Year of H. 8. cap. 39. an Act, taking Notice of the former Act, made in the *Fourteenth* Year of his Reign, about General Surveyors, forms another Court of *General Surveyors of the King's Lands*, much after the Manner of the Court of *Augmentations*, only with some larger Powers.

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The same Act does also enlarge the Power of the Court of *Augmentations*, by enacting, That all Payments made by the Treasurer of the said Court by Decree or Commandment of the Chancellor, by Assent of the Council, for buying Lands, or for Recompence or Satisfaction of Debts and Expences, not exceeding 200 l. to one Person, shall be good against the King. And if Persons pretend Title to Lands sold, or exchanged by the King, upon which a Rent is reserved payable in the Court of *Augmentations*; or demand any Rent out of such Lands: Or if the King shall claim Right to Lands by Him sold, or exchanged, upon which a Rent is reserved payable in the Court of *Augmentations*; or to any Charge upon Lands appointed to the Court of *Augmentations*: The Chancellor and Council of the Court of *Augmentations*, shall have Power to examine such Demands, and by their Discretions to hear and determine the same; and to decree Recompences, &c. out of the King's Treasure, where Equity shall appear, in the Cases mentioned in that Statute.

Afterwards, by Letters Patent, in 38 H. 8. reciting the Erection of the several Courts of *Augmentations*, and *General Survey*, and that the Rules for governing of them were not sufficiently certain, the King does thereby determine and dissolve those Courts; and erects a new Court, to be called the Court of *Augmentations and Revenues of the King's Crown*: And directs that all Revenues, under the Survey of the former Courts, should be put under the Government of this new Court; And appoints the Officers, and their Business; and in particular, the Chancellor, and General Surveyors to take the Accounts

of the Treasurer, and other Officers; and to make Allowances for all Payments of Annuities, Fees, &c. and to give Discharges: And that the Treasurer shall pay all Monies, Fees, or Annuities, directed by the King's Letters Patent; or mentioned in any Warrant directed by the King; or in any Warrant, or Decree, or Order to be made by the Court, or heretofore made in the Court of *Augmentations*, or *General Survey*; or granted by any Letters Patent sealed with the Seal of either of the said former Courts. But Pensions to religious Persons, or Fees, or Annuities chargeable upon Monasteries, were to be paid by the Receivers of the Counties.

And these Letters Patent are confirmed by Act of Parliament. 7. Ed. 6. cap. 2.

I have been somewhat long in shewing the Powers vested in the Court of *Revenues and Augmentations of the Crown*, by the several Acts of Parliament, and Letters Patent: But I thought it material to shew, that a Power was clearly vested in the Chancellor and Council of that Court, (and that to be exercised in a summary Way, according to their *Discretions*;) to relieve Persons who came before them for Fees and Annuities; and to require the Treasurer of that Court to make Payment, and to discharge the Treasurer by their *Bill signed*. Which was the Thing to be proved.

I will not spend Time to shew, that they did constantly exercise this Power, during the Continuance of that Court.

I have perused a Vellum Book of Decrees of the Court of *Augmentations*, in the Time of H. 8. which contains the first Proceedings after

after the Erection of the Court; and also a Book of Decrees of that Court, during the first four Years of *Ed. 6.* which was cited by my Lord Ch. Justice; and also many Decrees in the same Reign entered upon Parchment Rolls, all remaining in *the Court of Augmentations*: By which it does appear, that Court acted merely as a Court of Equity.

The Bills, (of which there is one entered at large, with the Proceedings upon it, and the Minutes of the Decree, and, after that, the Decree itself drawn up,) are in *English*, in the Form of a Petition, and the Case comes to hearing in a summary Way, and the Decree is made; and if it be for Payment of Money, it is decreed to be paid by the Treasurer of the Court, and *this Decree* is always mentioned to be His sufficient Warrant and Discharge; and the Decree is signed by the Chancellor, and a *Quorum* of the Council.

These Proceedings, sure are not in Imitation of the Court of Exchequer before the Barons.

Amongst these Proceedings, there are hundreds of Decrees for Annuities, Pensions, Rents, Fees, &c. So that this Court was in full Possession of this Authority at the Time of the uniting it to the Court of Exchequer.

Thirdly, The only Thing which remains, is to shew that, by the Union, this Power was sufficiently transferred to the Exchequer:

The same Power, which the Act. 1. *Mariae cap. 10.* did give to Queen *Mary*, for dissolving the Court of *Augmentations*, and uniting:
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it to any other Court, was by the Act 7 Ed. 6. cap. 2. given to Him, in almost the same Words; except only that there is a new Proviso, for the further Saving of Annuities payable out of *the Court of Augmentations*, added in the Statute of Queen Mary.

I suppose it will be granted, that the Words of that Statute are sufficient to save the Fees and Annuities, payable in *the Court of Augmentations*, from being lost by the dissolving, or annexing of that Court.

Then the Letters Patent of Queen Mary, which do unite, transpose, and annex that Court to the Exchequer, there to be and continue as a Member, and Parcel of that Court, do seem sufficient to carry over the Business and Power of that Court to the Court of Exchequer, under such Orders and Form as is expressed in the Schedule annex thereto.

By the 15th Article of that Schedule, Sheriffs and other Accountants are to pay all Annuities, Fees, Pensions and Corodies, according to Grants allowed and inrolled; unless they shall have special Commandment to the contrary by the Court. And as for Payments of that Kind to be made at the Receipt, besides that the Act itself gave an Authority, there was a general Dormant Privy Seal lodged with the Treasurer and Chamberlains.

And as the Powers of *the Court of Augmentations* were sufficiently vested in the Court of Exchequer, by the Act of Parliament and the Letters Patent; so were the same, from the Time of the Union, exercised accordingly.

On the Twenty-sixth of January, 1 Maria,

the Lord Chancellor, in open Court, delivered

vers the Letters Patent for dissolving and uniting the Court of *Augmentations*; which were received by the Lord Treasurer, Chancellor, and Under-Treasurer, and Barons, and were inrolled 1 *Mariae Rot.* 80. in the Office of the King's Remembrancer.

And the next *Easter Term* the Grantees of Rents come in great Numbers, and exhibit their Letters Patent under the Seal of the Court of *Augmentations*, and pray that a Search may be made for the Decrees of that Court, whereby they are intitled; and it is done: And thereupon, without more Formality, the Barons order that the Ar-rears, and growing Payments of the Annuities should be paid at the Receipt of the Exchequer. The Entry is *Quod Satisfiat*.

Pasch. 1 *Mar. Rot.* 92. *Pope's Case*, and very many others. *Trin.* 1 *Mar. Rot.* 27.

And all the Proceedings are summary; sometimes upon the Oath of the Party, that he was not paid in the same Manner as in the Court of *Augmentations*. For this, see *Glasbie's Case*, 1 *Mar. Rot.* 29; *Pantwentworth's Case*, 1 & 2 *Phil. & Mar. Rot.* 158; *Mich.* 1 & 2 *Phil. & Mar. Rot.* 175. *Sir Thomas Bromley's Case*; *Rot.* 210. *Thompson's Case*.

And very great Numbers of these Cases are entered in the Rolls of the King's Remembrancer's Office in the Time of Queen *Elizabeth*: *Pasch.* 2 *Eliz. Rot.* 145. *Bashe's Case*; *Mich.* 2 *Eliz. Rot.* 196. *Badcock's Case*; *Hill.* 3 *Eliz. Rot.* 148. and downwards for some Time; tho' by Degrees the Number did lessen, as the Grantees died.

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I shall spend no more Time in shewing, that these Decrees, or Orders of the Barons, of which so many are to be found after the Union of *Court of Augmentations*, were founded upon the Power transferred by the Union to the Court of Exchequer.

I will only add, that as the Case stood upon the Act 1 *Maria*, admitting the *Court of Augmentations* had been utterly dissolved, and the Revenues, which were under the Survey of that Court, had fallen under the Government of the Exchequer as the original Court of Revenue; yet, nevertheless, the Barons were sufficiently authorized to order the Payment of Annuities, which were payable in the *Court of Augmentations*, by the Clause in the Statute, 1 *Maria*, which says, *That such Fees and Annuities shall not be extinct, but in Default of such Annexation, &c. shall be paid out of the Queen's Treasure, in any of the Queen's Courts where sufficient Revenue shall be to answer the same, by the Hands of the Officers of the same Court, in such Manner as the same might have been done, or been paid, in any other Court or Place, if this Act had not been made.*

The Consequence of which would have been, that as the Annuities were payable before by the Treasurer of the *Court of Augmentations* by the Order of that Court; so, by the special Authority given by this Act, the Court of Exchequer might direct the same to be paid by the Treasurer of the Exchequer; and such Direction, in those particular Cases, would be a good Warrant in Point of Law. And yet, no Argument would be deducible from thence to maintain the

the Judgments now before Us, which relate to Grants which never were under the Survey of the *Court of Augmentations*.

But besides what might be inferred from this Statute, the Treasurer and Chamberlains of the Exchequer had a full and ample Authority, under the Privy Seal, for Payment of the Annuity to Sir *Thomas Wroth*. The Privy Seal bore Date the 19th of *March*, 2 *Eliz*; and indeed, it is the same Privy Seal, which is mentioned in the Report of Sir *Walter Mildmay's Case*, cited in the *Earl of Devonshire's Case*. 11 Co. 91. a.

I have not been able to recover a Copy of that Privy Seal; and the Entries of the *Pell* of that Year are lost, or burnt, as most of them are. But it is recited in a Privy Seal, bearing Date the 27th of *April*, 1. *Jac*. 1. to contain, among many other Things, a General Authority to the Treasurer, Chamberlains, and Under-Treasurer for the Time being, to make Payment of all Annuities, Fees, Wages, Diets and Rewards, and the Arrearages of the same, as should be due to any Persons whatsoever by any Assignment, Act of Parliament, Letters Patent, or otherwise howsoever: And, by the same Privy Seal, King *James* does command Payments to be made according to the Tenor and Effect of the said Privy Seal of the 19th of *March*, 2 *Eliz*.

So that tho' the Original Privy Seal is not to be found, yet it is sufficiently recited in this Privy Seal of King *James*; and Mention is made of it in the Entries of the *Pell* in many hundred Places. And the Privy Seal of the 10th of *June*, 1 *Jac*. 1. does again take Notice of the same; and does give the like

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large and general Power for Payment of Annuities, Fees, &c.

And therefore, it was not at all strange that the Arrears of Sir *Thomas Wroth's* Annuity were paid, when the Writ of the Exchequer had certified the Treasurer and Chamberlains that it had a Continuance, and what was the Sum to which the Arrears did amount: But it was paid by Force of the Privy Seal.

It might be paid, as *Plowden* expresses it, according to the Effect of the Writ, but not by the Authority of it.

And upon the same Reason it is, that the Objection drawn from the *Liberate*, which goes from the Barons to the Treasurer and Chamberlains every Term, *pro necessariis Scaccarii*, (as if that inferred any Authority in the Barons, to direct the issuing of Money out of the Receipt,) does fall to the Ground. My Ld. Ch. Justice *Treby* did observe, that in the Payments made of those Sums, *pro necessariis Scaccarii*, never any Notice was taken of the *Liberate*, but the Warrant was formed upon the Privy Seal, authorizing such Payments.

And in the Entries, which are in the *Pells*, of this Payment, all along Queen *Elizabeth's* Reign, (I mean from the fourteenth Year downwards, for the other Books are lost,) the constant Entry is, *To Mr. William Bilersby, Usber of the Exchequer, upon the General Privy Seal, the 2d of March, 2 Eliz. and by Liberate directed to the Treasurer and Chamberlains, for the Charges of the Court of Exchequer, for such a Term.*

Indeed in one Place I find there is an Omission of mentioning the Privy Seal, but that

that is but the Negligence of the Clerk: And I find such Omissions too often made in those Entries, in other Cases; tho' it be plain, there was an Authority under the Great or Privy Seal, by other Entries of like Payments in the same Books.

So that this *Liberate* amounts to no more than a *Certificate* of what the Sum is: The *Warrant* for Payment is the Privy Seal. Tho', perhaps, in that particular Case, the Treasurer and Chamberlains have a greater Latitude, than in any other: For *Gervase of Tilbury* reckons up those Payments, *de minutis necessariis Secretarii*, as Payments They might make, *sive brevi Regis*. Dial. de. Scac. Lib. 1. c. 3.

I have been too long already; but I will add one Consideration more, which does arise from the *Inconvenience*; not a considerable Argument in Law: Which is, that if the King's Treasure be so far subject to the Administration of an ordinary Court of Justice, as that it must be regularly issued upon the Application of the Subject, who has a Demand thereupon for an Annuity, or any other Debt, (for I do not see but the Reason is the same;) This may turn to the weakening of the publick Safety to a very high Degree.

The Barons of the Exchequer cannot, as such, be constant of the Necessities of the State: And if They were, and knew them to be ever so pressing, They must act according to one Rule; and must order a Pension, granted upon no Consideration, or, perhaps, upon a very ill one, and for a pernicious End, to be paid with the very Money, which ought to be employed, and, possibly, was provided by

Parliament, for suppressing a Rebellion, or resisting an Invasion, or setting out a Fleet.

For They, as a Court of Justice, have no Judgment of Discretion allowed them: Whenever the Party comes to pray it, the Grant must be inrolled and allowed, and the Judgment given, and the Writ go.

And what is the Treasurer to do in such a Case? Is he to obey the Great or Privy Seal, which requires the Money for the Uses of the War, and the necessary Defence of the Realm? Or the Exchequer Seal, which requires it to be paid for the Use of a private Subject?

He would be under a great Difficulty; especially if there be ground to think, that such a Writ would be the Foundation of an Action against Him, which, if I did not misapprehend, was affirmed by One.

Co. Lit.
106.

The Law Books may say, that the King's Treasure is sacred; that it does *respicere Regem, & Regnum*; that it is *Anima Republicæ, Firmamentum Belli, & Ornamentum pacis*: It is, after all, at the Disposition of the Barons of the Exchequer. Nay it is, in some Sort, at the Disposal of the Subject; who takes his own Time to make his Demands, may suffer his Arrears to run as long as he pleases, and, at his Pleasure, call for them, in the midst of a War, and to the Disappointment of the publick Safety.

What should hinder, but that all the Arrears of the Annuities and Pensions, granted in the Reigns of King James the First, and King Charles the First, should be demanded in this Manner? And all the Debts secured during the late Civil War? At least, so far as the old Branches of the Hereditary Revenue would extend to pay. The

The Truth is, this Method does, in effect, set aside the Lord Treasurer, one of the greatest Officers of the Kingdom. My Ld. Ch. Justice *Coke* has a Fancy, that his *White* ⁴ *Inst.* *Staff* was given him, to drive away *Importunate Suitors*; but this would be to little Purpose: They have a more certain Place to resort to; 'tis but going to the Barons of the Exchequer, and they will command the Treasure from him.

But the popular Objection is, That to say this Suit will not lie, is to leave the Property of the Subject precarious; and that if he has a Right, he must have a Remedy.

The Answer is, That all I have said goes only to this particular manner of Proceeding, as being altogether new: It only relates to the new assumed Power of the Barons immediately over the Revenue in the Receipt of the Exchequer; it does in no Sort lessen their known Power over the Revenue, while *in transitu*; nor does exclude them from any legal Course, whilst the Revenue is in the Hands of any Inferior Officer: It does not preclude the Subject from suing to the Person of the King, by *Petition of Right*: Consequently, it does not tend to hinder him from the known and ordinary Methods, which have been used in all Ages, in Cases of this Nature, and in which the Subject has acquiesced for so many hundred Years.

It does not appear to me, that this Method was ever known or practised: And under a Pretence of assisting Property, a new Course of legal Proceedings is not to be introduced; nor a new Power placed in the Barons of the Exchequer, to which none of their Predecessors pretended.

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The Law must remain as it is, till some new Law hath changed it. And I should much doubt, whether a new Law for the more easy Recovery of Pensions granted by the Crown, would be for the Good either of King, or People.

If, as the Common Law stood, Grants of Pensions and Annuities out of the Revenue, be, in some Sort, depending upon the Justice and Honour of the Crown, as to the Time and Manner of Payment, I do not see that the Publick is hurt by it: The Revenue is likely to remain the longer with the Crown.

If it be said, that the Subject has a Hardship in this Case, and must go far about to recover his Right; let it be considered how much better his Case is, than it was at Common Law.

It was hard, indeed, before the Statute of *Edward* the Third, when he could not interplead with the King, upon an *Office* found: It was hard, before the Statute of *Richard* the Second, when he could not be allowed to shew his Discharge, when he was impeached in the Exchequer, without going to the King: And so it was before the Stat. 2 *Ed.* 6. when he had no Way to save his Term, &c. upon an *Office* found: But yet after all the Law was so: And whilst it continued, the Courts were to judge accordingly. And if, in Cases like this, it be thought that a better Remedy should be provided, the same Method must be taken, of procuring a new Law.

The Patentees in these Cases, I believe, had no Notion of this Remedy, when the Grants were made to them: This is of a later Invention.

They were contented to apply for Payment in the ordinary Course, and did obtain Warrants from the Lord Treasurer for some Arrears, with an exprefs Clause in those Warrants, forbidding to levy further Tallies, without further Order.

Nor is it to be said, that in the Method, where the Application is to be made to the Person of the King, the Subject is precarious; for it is to suppose, what is not to be supposed in Law. It is a Supposition contrary to the Principles upon which the *English* Constitution is framed, which depends upon the Honour and Justice of the Crown.

Such kind of Suppositions may be carried much further: You may as well say all Property is precarious, because you may suppose the King will make no Judges; or will adjourn the Terms from Time to Time; or will suffer no Writs to issue, without which no Suits can be.

It must be presumed the Crown will pay its just Debts. But to say the King is not to have the ordering the Course of Payments, when the Money is in his own Coffers, is to deny him that, which is in every Subject's Power: It is to take from him the Judgment of publick Necessities, or, at least, the Means of relieving them.

I have shewn the Reasons for which I cannot give my Opinion for the affirming of these Judgments. But much the greater Part of my Lords the Judges, having delivered their Opinions for the Affirmance of them, I shall defer doing any Thing further, till I hear the Opinion of the Judges upon the Point referred to Them. *Whether,*

as this Court is constituted, Judgment ought to be given according to the Opinion of the greater Number of the Judges, who are called by the Lord Chancellor and Lord Treasurer to their Assistance, notwithstanding They themselves are of a different Opinion?

Afterwards, on Tuesday November the 24th, 1696. The Lord Keeper came again into the Exchequer Chamber, and declared, That He had received a Paper from the Lord Chief Justice Holt, containing the Opinion of the Judges upon the Question referred to them: And that three Judges were of Opinion, That the Lord Keeper was bound to give Judgment in these Cases, according to Opinions of the Majority of the Judges by Him call'd to his Assistance: But that seven Judges were of Opinion, That He was not bound by such Majority of Opinions, but was at Liberty to give Judgment according to his own: And declared, That as to this Question, He Himself concurr'd in Opinion with the seven Judges. And accordingly pronounced Judgment, That the Judgments given in these Causes, by the Court of Exchequer, be reversed.

But the judgment of the exchequer chamber was afterwards reversed in parliament. However I understand, that very learned men have thought Lord Somers's judgment in the Exchequer chamber the

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right one: & I have heard it as an anecdote from Judge Pratt, that Lord

P Age 12. Line 21. read to it. p. 30. l. 24. r. 2 Ed. 2.
 m. 2. 4. p. 32. l. 23. r. 2 H. 6. n. 35. p. 33. l. 6.
 & p. 35. l. 2. r. Liberates. p. 101. l. 16. r. Court.
 p. 120. l. 4. r. of the Court.

upon reading Lord Somers's argument was shaken in the opinion ^{himself} delivered on the other side.

A. H.

